

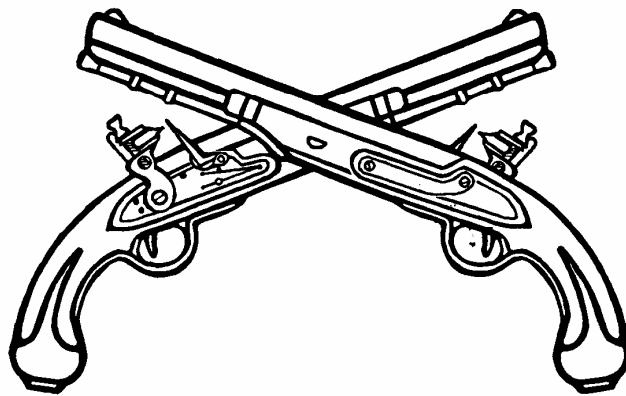
**SUBCOURSE  
MP 2002**

**EDITION  
C**

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**SEARCH, SEIZURE, AND TEMPORARY  
STORAGE OF EVIDENCE AND CONTRABAND**

**MP**



**SETS THE STANDARD FOR EXCELLENCE**

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**THE ARMY INSTITUTE FOR PROFESSIONAL DEVELOPMENT  
ARMY CORRESPONDENCE COURSE PROGRAM**

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# SEARCH, SEIZURE, AND TEMPORARY STORAGE OF EVIDENCE AND CONTRABAND

SUBCOURSE NO. MP 2002

EDITION C

United States Army Military Police School  
Fort McClellan, Alabama 36205-5030

4 Credit Hours

Edition Date: November 1995

## SUBCOURSE OVERVIEW

We designed this subcourse to teach you advanced supervisory skills for the following: identifying the procedures for conducting a legal search and seizure; handling evidence properly; establishing a temporary evidence storage facility.

There are no prerequisites for this subcourse.

This subcourse reflects the doctrine which was current at the time it was prepared. In your own work situation, always refer to the latest official publications.

Unless otherwise stated, the masculine gender of singular pronouns is used to refer to both men and women.

## TERMINAL LEARNING OBJECTIVE

**ACTION:** You will learn the advanced supervisory skills needed in identifying the procedures for conducting a legal search and seizure and handling evidence properly.

**CONDITION:** You will have this subcourse, paper and pencil.

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## LESSON 1

### SEARCHES AND SEIZURES

Critical Task: 03-3748.00-8020

#### OVERVIEW

##### LESSON DESCRIPTION:

In this lesson you will learn to identify the procedures to conduct a legal search and seizure.

##### TERMINAL LEARNING OBJECTIVE:

ACTION:	Identify the procedures to conduct a legal search and seizure.
CONDITION:	You will have this subcourse, paper and pencil.
STANDARD:	To demonstrate competency of this task you must achieve a minimum score of 70 percent on the subcourse examination.
REFERENCES:	The material contained in this lesson was derived from the following publications: AR 27-10, AR 190-22, AR 195-5, AR 210-10, FM 19-10, FM 19-20, MCM, and UCMJ.

#### INTRODUCTION

In Lesson 1, Searches-and Seizures, you will discuss--

- o Procuring and executing search authorizations.
- o Searching persons, vehicles, and buildings.
- o The Plain View Doctrine.

As a military police duty officer or commander, you will be responsible for overseeing the searches and seizures made by your personnel. Searches must be conducted in a lawful manner to detect the presence of any weapons, evidence, contraband, and to ensure the admissibility of these items in a court-martial. As the supervisor, you must know the laws and procedures necessary for conducting searches and seizing evidence and contraband.

Since there are so many legal considerations regarding searches and seizures, Army regulations, field manuals, and case law, examples will be provided.

For your reference, a list of definitions and acronyms is provided in Appendix A at the end of this subcourse.

## BACKGROUND INFORMATION

### Fourth Amendment to the Constitution

The Constitution of the United States is the basis for many of the laws of the land. The Fourth Amendment to the Constitution specifically applies to searches and seizures:

“The right of the people to be secure on their persons, houses, papers and effects, against unreasonable search and seizure, shall not be violated, and no warrant shall be issued, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.”

The Supreme Court has ruled that this amendment protects a person's privacy. This means that the government cannot unreasonably intrude upon or invade a person's privacy. The protection offered by the Fourth Amendment is applied to military search and seizures as well as civilian search and seizures.

### Private Party Searches

The Fourth Amendment does not apply to searches conducted by private individuals. The individual conducting a private search must act in a purely private capacity. This case was tested in Burdeau v. McDowell, 256 U.S. 456 (1921).

Modern technology had an interesting effect on the outcome of a recent Army case. In U.S. v. Sullivan, 38 M.J. 746 (A.C.M.R. 1993), a neighbor's monitoring of accused's cordless telephone conversation was a private search to which the fourth amendment did not apply. Tape recordings of the conversation were properly admitted.

Law enforcement officials, however, must be aware of the provisions of 18 U.S.C. sections 2510 and 2511 if they wish to intercept cordless telephone conversations as part of their investigatory activity. The most recent revision of 18 U.S.C. section 2510 in 1994 deleted the exclusion of cordless telephone communication from the term “wire communication.” Law enforcement officials will now be required to observe all the provisions of 18 U.S.C. section 2511 regarding interception and disclosure of wire, oral, or electronic communication concerning cordless telephone conversations.

Consider the following examples:

#### Example 1:

PVT Arhaid enters his room one day after work. He wants to listen to his new cassette tape player but it is gone. PVT Arhaid's roommate tells him that SPC Dumkauf took his new cassette tape player. PVT Arhaid goes into SPC Dumkauf's

room and gets his cassette tape player back. Has PVT Arhaid violated the Fourth Amendment? No, he has not. Because PVT Arhaid is not an MP or police agent, he is considered a private party. However, it is possible that SPC Dumkauf may have a civil action against PVT Arhaid for trespassing.

Example 2:

You are a military police supervisor. When you arrive home from work, you receive a phone call from your friend WO Howie.

WO Howie is upset because CPT Doodie took his golf clubs. WO Howie wants you to go into CPT Doodie's garage and get his golf clubs back. If you go into CPT Doodie's garage and seize the stolen golf clubs, would you be in violation of the Fourth Amendment? Since you are an MP officer, a search and seizure without appropriate authorization would be in violation of the Fourth Amendment.

### Foreign Searches

If you are supervising searches and seizures in a foreign land, there are some special considerations you must be aware of.

When the person or property to be searched is located in a foreign country, a search and seizure may be authorized IAW AR 190-22. US military personnel may conduct searches of property located outside of premises controlled by US forces if--

- o Host country authorities have given their consent.
- o The search is consistent with international agreements.
- o Host country authorities agree with the policy arrangements.

In the Court of Military Appeals case of United States v. Jordan, 1 MJ 334 (CMA 1976), the court ruled that “fruits” (evidence) of a search conducted by foreign officials would be admissible if the search was:

- o Congruent with US Constitutional standards/US Constitution N/A to Foreign officials.
- o Entirely conducted by foreign officials. The mere presence of American authorities will not nullify the admissibility of evidence obtained from a foreign search. However, the American authorities must not participate in the search.
- o Legal under the law.
- o Not shocking to the conscience.

## Abandoned Property

The Fourth Amendment does not apply to abandoned property. Abandoned property may be seized without a search authorization. Any person may seize abandoned property.

## Reasonable Expectation of Privacy

The Fourth Amendment takes into account the “Reasonable Expectation of Privacy” test. Suppose an individual was in an area that he or she expected to be private. What would happen if the government intruded into that area? This was tested in a Supreme Court case, Katz v. United States, 389 U.S. 347 (1967). Federal Bureau of Investigation (FBI) agents placed an electronic listening device on the outside of a telephone booth. Conversations by Katz were recorded. This evidence was judged inadmissible. The FBI (the government) was in violation of a reasonable expectation of privacy. The court said that the Fourth Amendment may even apply where no physical intrusion such as “protected area” or “trespass areas” are involved. Consequently, any analysis of a search and seizure must begin with the “Reasonable Expectation of Privacy” test. See Figure 1-1.

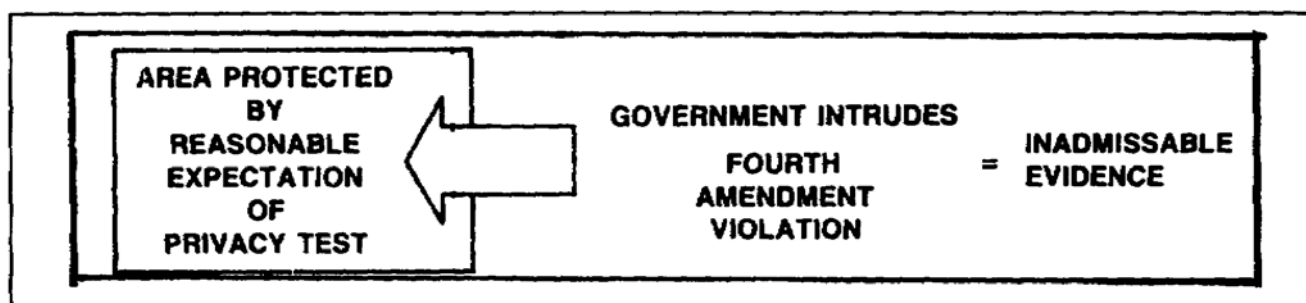


Figure 1-1. Fourth Amendment Violation by the Government.

## Exclusionary Rule

Evidence that is obtained in a way that violates the Fourth Amendment may not be admitted into court. This is called the “Exclusionary Rule.” The Exclusionary Rule is the primary way the Fourth Amendment is enforced. The rule was created to deter officials from violating the Fourth Amendment. To use the fruits of a search as evidence in court, the Fourth Amendment must not be violated while seizing the evidence.

## Fruit of the Poisonous Tree

“Fruit of the Poisonous Tree” refers to evidence that is obtained as a result of illegal government activities. Evidence that is collected by the government illegally will not be admitted into court. This has been tested in court during the cases of Silverthorne Lumber Company v. United States, 251 U.S. 385 (1920) and Nardone v. United States, 308 U.S. 338 (1939). If the accused person can establish a reasonable possibility that the evidence



against him or her was obtained unlawfully, that evidence is not admissible. If the prosecution wants the evidence admitted, it must prove that the evidence was obtained legally (Manual for Courts-Martial (MCM)). "Fruit of the Poisonous Tree" requires a casual connection between the illegal activity and the evidence derived from the activity.

### Probable Cause

Most legal searches begin with "probable cause." Probable cause is difficult to define clearly. See Figure 1-2. Figure 1-2 has been designed to give you a feeling for probable cause. Basically, probable cause to search means that there is--

- o Reasonable belief that a crime has been committed.
- o Reasonable belief that the person, property, or evidence connected with the crime is on the person or in the place to be searched.

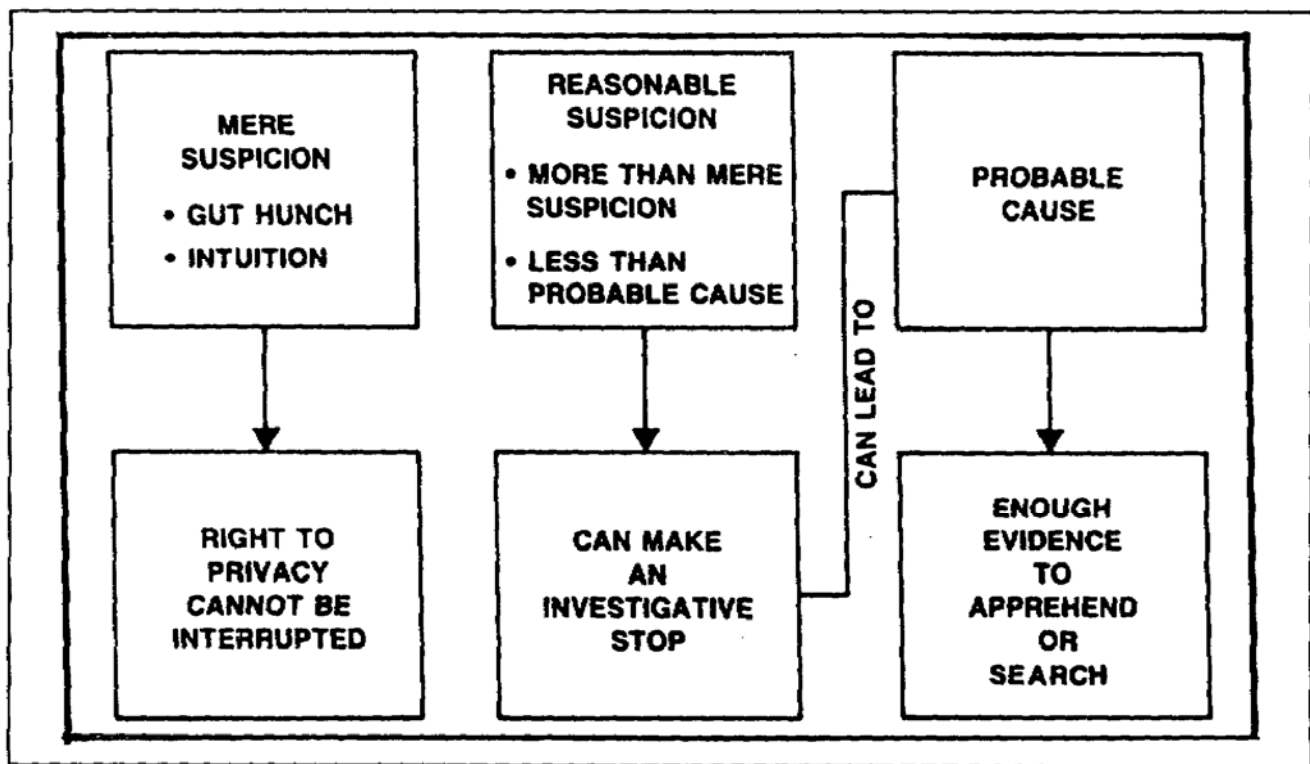


Figure 1-2. Probable Cause Measured.

### PART A - PROCEDURES REQUIRED FOR PROCURING AND EXECUTING AN AUTHORIZATION TO SEARCH

Now you understand some of the basic background that forms the laws and considerations for search and seizure. Next, we will look at some specific procedures required for getting and carrying out an authorization to search.

## DEFINITION OF SEARCH

A “search” is an examination of a specific person, property, or area. The search must be legally authorized. The people searching must look for specific property or evidence. They are searching for the purpose of seizing a specific person, property, or evidence. The seized evidence is for the purpose of criminal prosecution.

## AUTHORIZATION TO SEARCH

Because of the protection of the Fourth Amendment, MP or other authorized personnel must have legal “permission” or “authorization” before making a search. This authorization can be obtained through--

- o Searches based on “probable cause” that result in an “authorization to search” (“search authorization,” informally).
- o Searches not requiring “probable cause” such as--
  - Consent searches.
  - Searches incident to apprehension.
  - A frisk incident to a lawful stop.
  - Searches of open fields and woodlands.
  - Searches of government property.
  - Emergency searches to save life.
  - Searches within jails.
  - Restricted area searches.

The military uses “authorization to search” instead of the civilian “search warrant.” Authorization to search, as required under Rule 315 of the MCM, must still meet the fundamental requirements of “probable cause.” In order to get a commander's authorization to search, facts and circumstances must be presented that will convince the commander that items connected with criminal activity are in the place or on the person to be searched. The materials presented by the investigator must objectively constitute reasonable grounds for such belief. If “probable cause” is established by hearsay, the investigator must communicate the underlying facts and circumstances which--

- o Lead the hearsay source to think that the evidence is where he or she says it is.
- o Indicate that hearsay source is credible.
- o Indicate that the information is reliable.

The authorization to search may be written or oral. It may be based on sworn written or oral statements. The authorizing official must remain impartial.

Authorization to search may include the following people or places:

- o Searches of persons subject to military law.

- o Military property of the US.
- o Nonappropriated fund activities of the armed forces of the US.
- o Persons or property situated on or in a military installation, encampment, vessel, aircraft, vehicle, or any other location under military control.

#### Power of Authorization

Power to authorize searches may be granted by a military judge or magistrate. Power to authorize searches may also be granted by a commander who has control over the person, place, or thing to be searched.

#### Basis for Authorization

“Probable cause” requirements remain strict in military authorizations to search. The person granting the search authorization must have reasonable belief that the information presented in support of “probable cause” is based on fact and is reliable.

#### Execution of Authorization

After “probable cause” has been determined, the official will authorize the investigator to search. The official may order the search conducted in a particular way. The permission may be either oral or in writing. While the search is going on, the person being searched should be informed of the general nature of the search.

#### PROCEDURES REQUIRED FOR A MAIL SEARCH

Authority to search the mail is granted only by a US Court or a US Magistrate within the district where the property is located. This authority must be through a search warrant. The federal law is strict. It reads: “No person other than a duly authorized employee of the Dead Letter Office, or other person upon a search warrant authorized by law, shall open any letter not addressed to himself.” For mail searches, you should coordinate with the US Postal Inspectors who have authority over the mail.

#### Mail Within Postal Channels (See Figure 1-3)

The authority of a commander to search does not apply to mail while it is in the postal channels. Mail cannot be searched even when it is in Army postal channels.

#### Mail Out of Postal Channels

If a letter or parcel has not entered postal channels, it remains the personal property of the sender. As personal property, it is subject to search and seizure, even if it is sealed.

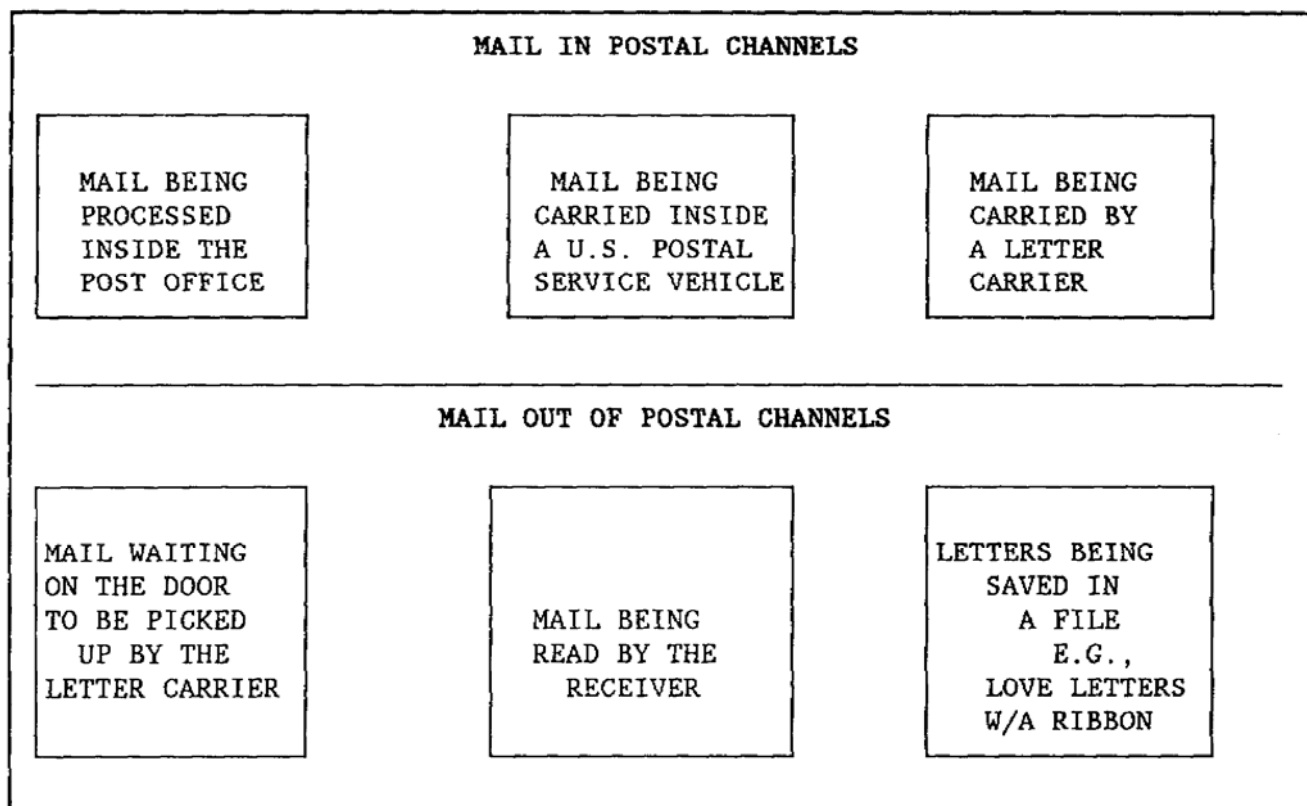


Figure 1-3. Postal Channels.

After letters and parcels have gone through the postal service and been delivered, they become the personal property of the person receiving them. As personal property, mail is subject to search and seizure in any legal manner. If the mail is personal property located on a military installation, it is subject to search and seizure.

#### PROCEDURES REQUIRED FOR A CONSENT SEARCH

When a subject gives you permission to search him or her or his or her possessions, it is considered a "consent search." The subject may give his or her permission or consent to the following:

- o An MP.
- o A CID investigator.
- o Other authorized persons.
- o Anybody.

In consent searches, consent must be given freely. The subject to be searched must be intelligent enough to understand what the results of the search might mean. He or she also must not have been exposed--

- o to fraud.
- o to deception.
- o to coercion.

According to the law, Article 31 and the MIRANDA-TEMPPIA, protection rights do not need to be given for a consent search. However, it is a good idea to go ahead and give the rights warning before you conduct the search. Both Article 31 and MIRANDA-TEMPPIA will be discussed later in this learning event.

#### Authority to Consent

Below are listed those persons who are authorized to consent to a search. Before you conduct a consent search, make sure the person giving his or her permission is authorized to do so. Authorized persons are--

- o The person being searched.
- o Co-tenants and spouses can consent to searches of jointly-owned property.
- o People who are temporarily taking care of another person's property, if they are in legal possession of that property.
- o Employers can consent to a search of an employee's work area for things connected with employment.

Persons who may not authorize consent searches are--

- o Landlords cannot consent to searches of property they have rented (Stoner v. California 376 U.S. 483 (1964)).
- o Co-tenants and spouses cannot consent to searches of property that is exclusively owned by the accused.
- o People temporarily taking care of another's property that they do not legally possess.
- o Employers cannot consent to searches of their employees' personal use areas or property such as wall lockers.

In the examples listed below, you are a military police supervisor. Determine if the persons consenting to search had proper authority to give consent.

#### Example 1:

You are supervising MPI Jones on the track of PVT "Lightfingers Lou." Finally, Jones' lead pays off and he discovers where Lou lives. Arriving at "Lou's" residence, Jones finds he is not home. This is no problem since the landlord is at home in the next apartment. The landlord is eager to help

apprehend “Lou.” He gives permission to search “Lou's” apartment and gives access. Is this a legal search in accordance with (IAW) the “consent to search” laws? No! According to the case of Stoner v. California, a landlord cannot consent to search of property he or she has rented.

Example 2:

An MP working in the section you are supervising reports a search conducted earlier during the day. MP Stone learned that the wicked “Lightfinger Lou” might really be PVT Larry Lou. MP Stone approached PVT Lou's supervisor and requested permission to search PVT Lou's work area. Lou's supervisor agreed to let MP Stone search Lou's work area. The supervisor also let MP Stone search the employee lounge. While MP Stone was searching the work area, the supervisor unlocked and opened PVT Lou's personal wall locker where MP Stone found evidence that related to a recent theft. Under the consent to search laws, was MP Stone's search legal? Can you explain which parts of this scenario were legal and which were not?

MP Stone was within the limits of the law searching PVT Lou's work area. It was also legal for MP Stone to search the employees' lounge area. The search of PVT Lou's locked wall locker, however, was not legal. PVT Lou's supervisor did not have legal authority to consent to a search of PVT Lou's personal area.

We have just finished discussing examples of voluntary consent to search. There are certain factors that must be present to show that the consent was given voluntarily. Those factors are--

- o Defendant's education.
- o Whether the questioning was prolonged.
- o Whether the defendant was already under apprehension.
- o Whether the defendant's act of assisting in the search demonstrated consent. For example, did the defendant unlock containers for the search?

Remember: Your MP must follow these legal considerations while conducting a consent search. If they violate these rights, evidence seized will not be admissible in court.

## PART B - PROCEDURES REQUIRED FOR SEARCHING PEOPLE, VEHICLES, AND BUILDINGS

Part B is concerned with searching people, vehicles, and buildings. In this learning event, you will determine the requirements for--

- o Search incident to an apprehension.
- o Search under exigent (urgent) circumstances.

- o Search and seizure of evidence or contraband from a person.
- o Search and seizure of evidence or contraband from a vehicle.
- o Search and seizure of evidence or contraband from a building.
- o Rights warning, procedures, waivers, and documentation with respect to confessions and admissions.

We will examine some basic knowledge required for executing or supervising apprehensions and searches.

As a military police supervisor, you have greater responsibilities than the average soldier. You have certain rights to use to enforce the law. Some of those rights are--

- o to apprehend law and regulation violators.
- o to search and seize certain property.
- o to use force to enforce the law when necessary.

You must have good working knowledge of--

- o Military law.
- o Constitutional requirements for lawful apprehensions, searches, and seizures.
- o Constitutional requirements for interrogation of witnesses.

## APPREHENSION

Apprehension is defined as the “taking into custody of a person.” This may be done by consent of the person being apprehended or by the use of force.

An apprehension must be conducted by an authorized person. Military personnel authorized to apprehend are defined in Article 7, UCMJ, and Rule 302, MCM. Authorized personnel include--

- o Commissioned officers.
- o Warrant officers.
- o Noncommissioned officers.
- o Military police in the course of carrying out their duties.
- o People designated to perform guard or police duties. This includes criminal investigation.

## Requirements for Apprehensions

In Part A you learned about “probable cause” as it related to protection of privacy and searches. “Probable cause” must also exist when making an apprehension.

Before apprehending someone, MP must have “reasonable belief” that an offense has been or will be committed. MP must also have a “reasonable belief” that the person ready to be apprehended committed or would have committed the offense. This belief can be based on MP observation or on a reliable report that an offense was committed.

## Conducting an Apprehension

When MP apprehend an offender, they should tell the offender that he or she is under apprehension. Part of the apprehension procedure may include reading a subject his rights. Also, Army policy recommends that MP tell the offender the general nature of the offense.

Arrest warrants are not generally required prior to the apprehension of service members. An arrest warrant would be required to apprehend a soldier in his government quarters if no exception like hot pursuit applies. This is due to the heightened expectation of privacy in a traditional dwelling place. The same, however, is not true for barracks rooms.

In U.S. v. McCarthy, 38 M.J. 398 (C.M.A. 1993), the Court of Military Appeals stated that a warrant was not required to apprehend the accused in his military dormitory room. Under the fourth amendment and R.C.M. 302(e)(2), an apprehension warrant or authorization is only required if the apprehension occurs in the “home.” A barracks room is not equivalent to a “home.” The precedential value of this case is not entirely clear. Members of the soldier's chain of command, military police, and investigators should consider the effect the “single soldier” initiative will have upon a soldier's reasonable expectation of privacy in his/her barracks room. There are no cases on this issue at present.

## SEARCHES INCIDENT TO APPREHENSION

After MP apprehend someone, they must make sure that they secure--

- o Their safety and the safety of bystanders.
- o Weapons from the subject.
- o Destructible evidence.

Because of these safety factors, the law allows you to conduct a search incident to apprehension. To be legal, the search must meet the following requirements:

- o Apprehension must occur before the search is made.



- o Search must be limited to the person apprehended.
- o Scope of the search must meet legal requirements.

### Search Requirements

After an apprehension, the law permits an authorized person to conduct a search without obtaining an authorization to search. The search incident to apprehension has specific limitations. The major limitation is that the area of search can include only the area in the immediate control of the person. The area of immediate control is defined as the area within the “grasp” or “lunge” of the offender.

Beyond the “lunge” area, the “apprehension” alone will not justify a search. This was upheld in Chimel v. California, 395 U.S. 752 (1969). If other circumstances give rise to a need to search beyond the “lunge” limits, MP should look to other theories of search and seizure to accomplish their task. Other theories of search and seizure include--

- o Consent searches.
- o Probable cause plus exigent circumstances searches.
- o Inventories based upon impound of property.

These theories of search and seizure may allow a search beyond the “lunge” limits.

However, you should remember that the courts prefer that MP secure a search authorization rather than search immediately. This means that MP should take the extra investigative time and effort to obtain search authorizations if they want to extend the limits of their search. The following examples are provided for clarification:

#### Example 1:

PVT Dowrong is apprehended for murder on the front steps of his quarters.

The apprehending MP suspects the murder weapon is in PVT Dowrong's secured wall locker. After apprehending PVT Dowrong, the MP searches PVT Dowrong's person. Finding no weapons, the apprehending MP goes into Dowrong's barracks, opens Dowrong's wall locker and proceeds to search.

Is this a legal search? Under the law relating to searches incident to apprehension, the person of PVT Dowrong could be searched. Since the wall locker was not within the reach of PVT Dowrong, it could not legally be included in the search.

## Example 2:

PVT Pothaid is apprehended for sale of marijuana. Can the briefcase he is carrying be searched? Yes, because the briefcase is within the reach of PVT Pothaid.

Conducting the actual search of a person and seizing evidence or contraband has certain requirements. In the next section, you will learn about some of those specific requirements.

## EXIGENT CIRCUMSTANCES SEARCH

Exigent circumstances refer to the conditions that demand prompt action. A search authorization or civilian search warrant is not required under this rule when there is--

- o Insufficient time. There must be reasonable belief that there is not enough time to get a search authorization. If such time was taken, the evidence would be removed, concealed, or destroyed.
- o Lack of communications. A condition must exist where MP could not get in touch with a person authorized to grant a search authorization. There must be a reasonable belief that such a delay would have the same results as listed under insufficient time.
- o Search of an operable vehicle. A vehicle is considered “operable” unless a reasonable person could know that it was not functional for transportation.
- o No requirement by the US Constitution.

## Article 31, UCMJ

This article is the application of the Fifth Amendment to military law.

## Military Rule of Evidence 312

MRE 312 provides specific procedures for obtaining evidence from the body. This rule identifies kinds of bodily evidence. It also provides a “sliding scale approach” to determine the protection given to an individual. “Sliding scale” means that the degree of bodily intrusion is considered. In other words, more protection is given for intrusions that are particularly sensitive. Soon we will discuss in greater detail the types of intrusions possible.

MRE 312 is based on the Fourth Amendment which protects a person from unreasonable search. This is mentioned here because MRE 312 is often confused with self-incrimination. As we go along in our discussion of search and seizure of evidence from a person, it may be necessary for you to refer back to these sources.

## Evidence Seized from the Person of a Subject

There are certain samples of evidence taken from a person that are not protected by the Constitution. The protection of the Fifth Amendment, Article 31, and MIRANDA apply only--

- o to testimonial utterances.
- o to verbal acts (the functional equivalent of a testimonial utterance).

No Constitutional protection applies toward--

- o Handwriting samples.
- o Voice prints.
- o Teeth prints.
- o Footprints.
- o Fingerprints.
- o Lineup participation of a subject not accused of a crime or in custody.

## A Visual Search of the External Portions of the Body

MRE 312 (G) is concerned with viewing external parts of the body for evidence. This does not include intrusion into the body itself or intrusion into body cavities. Examples of the types of evidence looked for in this type of visual search would include--

- o Tattoos.
- o Scratches.
- o Birthmarks.
- o Other identifying features of this type.

A visual search of the external body does not require a search authorization. Article 31 rights are not violated when the search is conducted in a reasonable fashion.

As a law enforcement official, you have the right to order a search of this type. The subject of the search does not have the right to refuse.

However, for the search to be legal, it must follow one of the situations listed below:

- o An inspection or inventory.

- o Border search.
- o Jail search.
- o Search incident to apprehension.
- o Emergency search (for example, medical purposes).
- o Authorization to search based upon probable cause.
- o Consent.

## INTRUSIVE BODY SEARCHES

Occasionally it becomes necessary to intrude into body cavities. This is particularly so when small items such as drugs are suspected. Intrusive body searches can only be done by qualified medical personnel. Searches requiring intrusion into the body are lawful only if--

- o There is clear indication that evidence of a crime will be found.
- o There is reason to believe that delay will cause destruction of this evidence.
- o The method of search is reasonable.
- o The search is incident to a lawful apprehension.

MRE 312 (c) covers basically two categories of intrusive searches. Those categories are--

- o A reasonable intrusion into the mouth, nose, and ears of a subject.
- o Intrusion into other body cavities.

### Intrusion into the Mouth, Nose, and Ears

This type of intrusive search does not require the permission of the subject being searched. However, the search must happen incident to one of the situations listed previously. For example, suppose you are supervising an MP section. SPC Dumkauf is being detained in custody after being apprehended. One of the apprehending MP suspects that SPC Dumkauf has managed to conceal something in his mouth. What steps would you advise your MP to take? According to MRE 312 (c), you may instruct your MP to conduct a visual search of SPC Dumkauf's mouth. Remember that this search can be conducted without Dumkauf's permission.

### Intrusion into other Body Cavities

Intrusions into other body cavities can be conducted with or without the subject's permission. If the subject gives his or her permission, any

evidence obtained would be admissible in court. But the subject does not have to give his or her permission for this intrusive search. A nonconsensual, intrusive search must comply with a number of rules:

- o For the purpose of search, the intrusion must be conducted--
  - To look for weapons, contraband, or evidence of a crime.
  - After obtaining a search authorization issued under MRE 315 (“probable cause” search rules).
  - By qualified medical personnel.
- o For the purpose of seizure, the intrusion must be conducted--
  - To seize weapons, contraband, or evidence of a crime.
  - After obtaining a search authorization issued under MRE 315 (“probable cause” rules).
  - By qualified medical personnel.

The one exception for seizure is if the evidence is in plain view. If evidence is in plain view, no search authorization is required. Searches under the “Plain View Doctrine” will be covered in greater detail in Part C.

Sometimes it is necessary to obtain body fluids as evidence. Body fluids that are collected are blood, urine, and the stomach contents. When it becomes necessary to collect these body fluids, MP must follow specific requirements. MRE 312 (d) requires that medical personnel be present and a search authorization be obtained.

There is an exception to the requirement for a search authorization. If the evidence being looked for tends to vanish quickly and easily, no search authorization is necessary. Examples of types of evidence that would tend to vanish quickly are alcohol and drugs.

The collection of necessary evidence (such as blood or urine) to determine a level of intoxication may be refused.

Involuntary submission to a breath or body fluid test is forbidden by AR 190-5. However, if a subject refuses to submit to a breath, urine, or blood test, his or her installation driving privileges may be revoked.

Should MP want an intrusive body search without a search authorization, they must make sure--

- o There is a clear indication that evidence of a crime will be found. This requirement is a much higher standard than “probable cause.”
- o The evidence is of a vanishing nature.
- o Qualified medical personnel conduct the search.

## FRISK SEARCH

When any MP has a “reasonable suspicion” of criminal activity, he has the right to stop, request identification, and question the person suspected. The stop must be based on reasonable suspicion that the subject has committed, is committing, or is about to commit a crime. MP may conduct a patdown or frisk search to look for concealed weapons. The proper basis for the frisk is reasonable belief that the subject is armed and dangerous. The purpose of the frisk search is to ensure the MP's safety. Consider the following example:

Two men are hovering about a street corner for a long time. It is apparent that they are not waiting for anyone or anything. The two men take turns pacing an identical route numerous times. Every time each man paces, he stops and looks through the window of the PX. After each route is completed, the two men talk with each other on the street corner. A while later, a third man joins their conversation and then quickly leaves. The two men leave, follow the third man and join with him again a couple of blocks away. Under these circumstances, are there sufficient grounds to make an investigatory stop? Yes.

It is clear that this is suspicious behavior. These men seem to be “casing” the PX.

These are the facts of a landmark case, *TERRY V. OHIO*, 329 U.S. 1 (1968), which established the standard for all stop and frisk cases. The standard is “reasonable suspicion.”

Military police and investigators must be aware of a significant new development in the law of stop and frisk. The “plain feel” doctrine is a variant of the “plain view” rules developed over many years of case law. It was first mentioned by the Supreme Court in the case of *Minnesota v. Dickerson*, 113 SCt 2130 (1993). In this case, the court stated that while police may seize nonthreatening contraband detected by “plain feel” during a *Terry* frisk, the incriminating nature of the contraband must be immediately apparent, for *Terry* does not permit an exploratory manipulation of the outside clothing to determine the identity of a pocket's contents.

In analogizing the new “plain feel” doctrine to the long standing “plain view” doctrine, Justice White stated, “... If a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour and mass makes its identity immediately apparent, there has been no invasion of privacy beyond that already authorized by the officer's search for weapons; if the object is contraband, its warrantless seizure would be justified by the same practical considerations that inhere in the plain view context.” *Minnesota v. Dickerson*, 113 SCt 2130, 2132 (1993). There are no reported military cases yet concerning the employment of this new doctrine.

An MP should make a frisk search in the presence of an assistant or witness. Ensure that the search is conducted by persons of the same sex. See Figure 1-4. The subject should stand with his or her back to the searcher. The

assistant should take a position which will allow him or her to watch the subject. The searcher should command the subject--

- o to spread his or her feet more than shoulder width apart.
- o to point his or her toes in line with his or her shoulders.
- o to extend his or her hands and arms.
- o to spread his or her fingers.

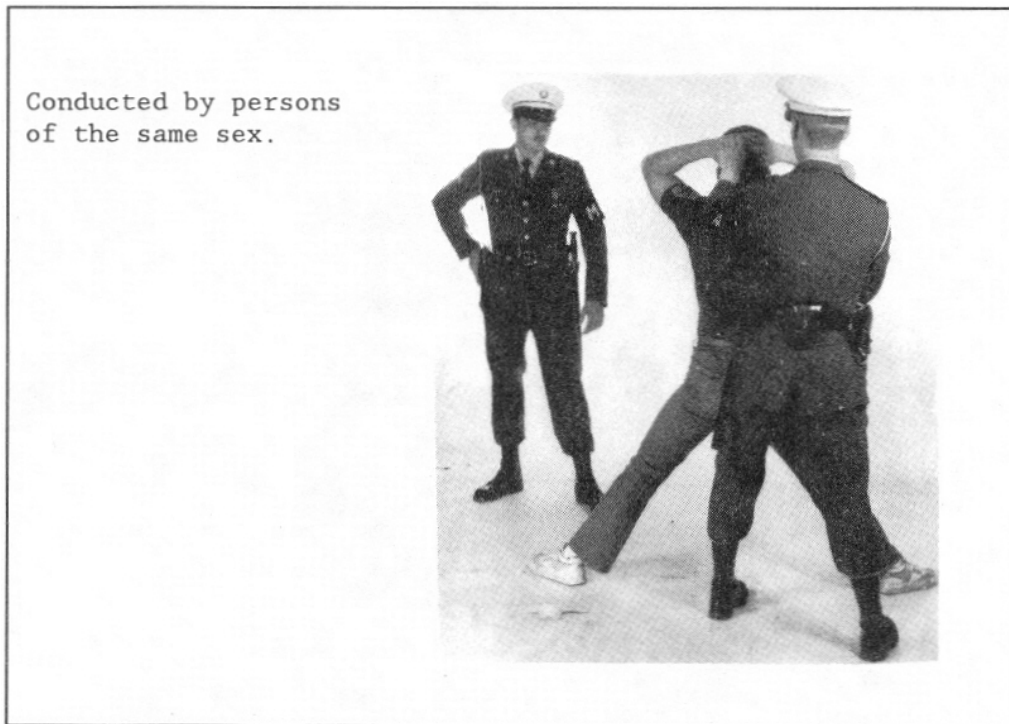


Figure 1-4. Frisk Search.

When the subject is in the appropriate position, the searcher should:

- o Remove and search the suspect's hat.
- o Search any property held or controlled by the suspect.
- o Move his or her hands over the subject's entire body patting down and crushing the subject's clothes. (He or she may reach into the inner clothing to remove discovered weapons.)
- o Apply hand irons after the search (if contraband is found on the subject).

All illegal items discovered from a frisk search may be seized as evidence.

## WALL SEARCH

The wall search may be conducted when an MP feels it is necessary. The purpose of the wall search is to render the suspect helpless while the MP conducts the search. Placing the suspect in an awkward, strained position gives the MP a greater degree of safety. The wall search is useful when MP must search several suspects. Any upright surface such as a wall or vehicle will do.

The searcher orders the suspect to stand, face the wall, and lean against it with upraised hands placed far apart and fingers spread. The suspect's feet should be wide apart, turned out, parallel, and far away from the wall. See Figure 1-5.

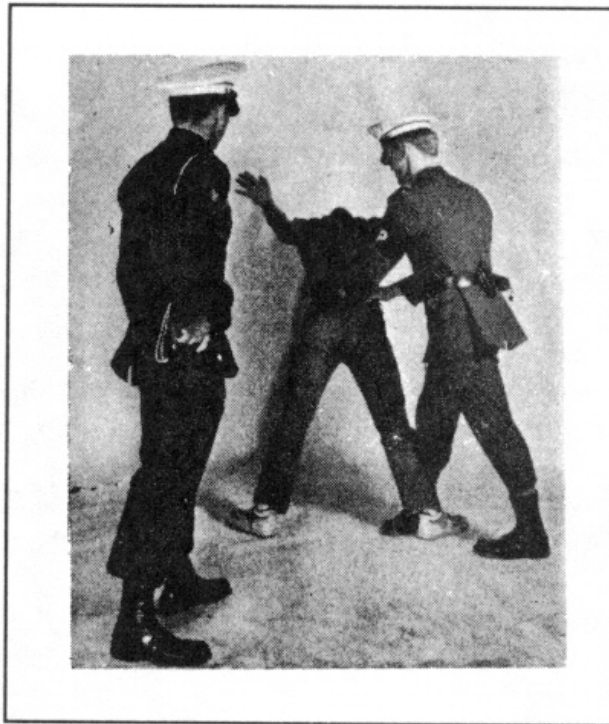


Figure 1-5. Wall Search.

The suspect must keep his or her head down. If hand irons have been applied, the suspect should lean with his or her forehead against the wall.

The assistant should stand on the opposite side of the suspect and to the rear. The assistant should cover the suspect with a weapon if he or she believes the suspect to be armed. When the searcher changes positions to the other side of the suspect, the assistant should also change positions. The searcher should always walk around the assistant. The searcher never walks between the assistant and the suspect.

When an MP searches, he or she must make sure--

- o His or her weapon is holstered with the flap secured.
- o To approach the suspect from the side.



- o To place his or her right foot in front of the suspect's right foot, making ankle-to-ankle contact. If searching from the left side, the searcher places his or her left foot in front of the suspect's left foot making ankle-to-ankle contact.

While conducting the wall search, MP must be alert. They have to prevent the suspect from attempting to disarm or injure them. During the search they should--

- o Remove the suspect's headgear--search the area beneath the sweatband and seams. Place the headgear on the ground near the assistant to be used as a container for certain items taken from the suspect.
- o Examine the suspect's hair, ears, hands, arms, right side of the body, and right leg.
- o Crush all clothing (not just pat the clothing).
- o Check the armpits, back, waist, crotch, legs, and tops of boots or shoes carefully.

If the searcher finds weapons or anything that could be used as a weapon, he or she places it in the headgear on the ground. Anything that is not a weapon or evidence can be left in the suspect's pockets.

Ideally, the MP have the suspect talk during the search. That will help determine if the suspect has anything in his or her mouth.

If there is more than one suspect to search, MP use the same wall to conduct the searches. Suspects are spread out and cannot reach one another. The assistant should take a position a few paces to the rear of the line. Again, the searcher never goes between the assistant and any suspect.

The next section will discuss the techniques necessary for searching members of the opposite sex.

#### Searching Members of the Opposite Sex

Male MP may search the coat, bags, and parcels of a female suspect. Beyond that, male MP should not search female suspects. Female MP should not search male suspects. The search must wait until a member of the same sex is available to do the search.

#### STRIP SEARCH

Since a search of someone's naked body is sensitive in nature, the strip search can be conducted only at the MP station or other suitable location. All people who are going to be confined should be strip searched.

After apprehension, strip searches are conducted when small items, drugs, or concealed weapons are expected.

While conducting the strip search, take care to avoid embarrassing the subject. Two unarmed MP should conduct the search while a third armed MP guards the door. After determining the position and duties of the MP, they should--

- o Examine each item carefully.
- o Inventory all items taken from the subject.
- o Search the subject's body, paying careful attention to the hair and body cavities. Do not intrude into body cavities.

Now you have learned the requirements necessary for searching and seizing evidence from a person. The next section on searching will focus on the requirements for legally searching and seizing evidence from a vehicle. There are special considerations inherent in searching vehicles.

## VEHICLE SEARCHES

Searches of military and private vehicles may be conducted--

- o With a search warrant.
- o By authorization of the installation commander.
- o By consent of the driver or owner (depending on the nature of the vehicle).
- o As incident to lawful apprehension.

### Special Considerations

When an individual is apprehended while driving a car, the entire car does not have to be searched. Earlier in Part B, you learned about the scope of a search and seizure. Remember that the scope of a search incident to apprehension is limited to that area within the subject's reach or control. This rule applies to searches of vehicles. Only those portions of the vehicle that the subject might reach may be searched.

This law was tested in court in the case of New York v. Belton (453 DS 454, 69 LEd 2d 768 101 S. Ct. 286, 1981). For example, MP Spry stopped SPC Boozer for questioning regarding erratic driving on a military installation. After pulling his vehicle to the side of the street, SPC Boozer exits his vehicle and walks back to meet Spry. After administering appropriate questions and tests for intoxication, Spry apprehends Boozer and places him in hand irons. Once Boozer is in custody, Spry conducts a search of his vehicle. Remembering the scope of search requirements, the MP limits his search to the area within SPC Boozer's reach. In the glove compartment Spry discovers an open liquor container and what seems to be amphetamine drugs. Will the evidence Spry discovered be admissible in court?

The answer is yes. Based on the BELTON case cited above, the MP may search the passenger compartment of the automobile but not the trunk. A policeman who has made a lawful custodial arrest of the occupant of an automobile may, as a contemporaneous incident of that arrest, search the passenger compartment of the automobile and may examine the contents of any containers found within the passenger compartment. The term “container” denoting any object capable of holding another object including closed or open glove compartments, consoles, or other receptacles as well as luggage, boxes, bags, clothing, and the like.

#### Probable Cause

Sometimes, where there is “probable cause” to believe that evidence is in the vehicle, the vehicle may be searched on a “probable cause plus exigent circumstances theory.”

Remember from the definitions section that exigent circumstances refer to conditions of a situation that demand prompt action.

You should remember, too, that it is possible to impound the vehicle and inventory it. Impounding the vehicle depends on the nature of the apprehension and the standard procedures of the apprehending agency. If an MP inventories the contents of the car, the inventory may not be a subterfuge or cover up for a search.

#### Time Limit

A vehicle must be searched as soon after apprehension as possible for the search to be considered incident to apprehension. If the circumstances of the apprehension do not permit an immediate search, MP use their judgement to determine a reasonable time frame. Twenty minutes is the normal time in between apprehension and subsequent search. If MP have any doubt at all about the length of time that has elapsed, they should obtain a search authorization before conducting the search.

So far we have discussed searches of vehicles as they apply incident to apprehension. Vehicles and persons entering and leaving military installations may also be searched.

AR 190-22, AR 380-20, and 50 U.S.C. 797 define the commander's authority to search. Civilian personnel entering an installation have the right to refuse a search. If they do, however, they can be refused entrance to the installation. Military personnel entering an installation and all personnel, civilian and military, leaving an installation may be searched over their objections if such search was authorized by the installation commander.

#### BUILDING SEARCHES

Entering a building for the purpose of searching for and seizing evidence or contraband carries inherent risks. To execute this job safely and efficiently, MP must follow specific requirements and procedures.

The first decision--do MP have the appropriate authority to enter the building? This authority may be based on the type building they are about to enter. Is it public or private? The classification of public versus private is important in determining authority to search. For example, private areas require a search authorization. Areas that are considered private are--

- o Homes.
- o Apartments.
- o Mobile homes.
- o Bachelor officer quarter (BOQ) rooms.
- o Bachelor enlisted quarter (BEQ) rooms.

However, government buildings or public areas such as common user areas in BOQs and BEQs, may be searched at anytime. Remember that inside BOQs and BEQs, rooms, foot and wall lockers are considered private areas. As private areas, MP cannot search them unless they have authorization and consent to search.

When MP conduct a search of a building they must consider many things:

- o Whether innocent people may be occupying the building.
- o The number of innocent people in the building.
- o Who the people are inside the building.
- o Precautions necessary to avoid injuries.
- o Whether they have sufficient manpower and firepower to carry out the search safely and efficiently.

After MP enter the building, they make sure--

- o to note all entrances and exits.
- o to note where they can find concealment to take cover.
- o to keep within a supporting distance of their partner.
- o to cover their rear.
- o to have a primary and alternate route of escape.

After MP have secured entrance to the building, they assure the safety of the people inside. Next, they conduct a thorough and systematic search. MP secure each area after searching it. This makes sure that weapons, evidence or contraband is not relocated to areas previously searched.

You have now learned the basics of the laws governing search and seizure. These laws are different than the rules governing military inspections.

## MILITARY INSPECTIONS

The primary reasons for military inspections are to determine and ensure--

- o Security.
- o Military fitness.
- o Good order and discipline.

There are traditional and special inspections. Traditional inspections are within a commander's authority. They are also part of his or her responsibilities. As such, the commander may examine, in whole or part, a unit, organization, installation, aircraft, or vehicle.

This inspection does not require "probable cause." Only a search for evidence to be used in criminal prosecution requires "probable cause." However, discovered unlawful weapons or contraband can be seized. These items then become evidence which can be held and used for criminal prosecution.

Trained contraband detecting dogs and other technical aids may be used during this type of inspection. The special requirements are listed in Figure 1-6.

In order to conduct an inspection specifically to look for weapons or contraband, certain conditions must be met. Those conditions are--

- o The presence of the items will negatively affect the unit's security, military fitness, or good order and discipline.
- o A "reasonable suspicion" exists that the items are in the command.

DOG	HANDLER
<ul style="list-style-type: none"><li>o <b>MUST BE TRAINED BY AN ACCREDITED TRAINING SCHOOL</b></li><li>o <b>PROVEN RELIABLE IN DETECTING CONTRABAND IN THE PAST.</b></li></ul>	<ul style="list-style-type: none"><li>o <b>MUST BE TRAINED IN AN ACCREDITED TRAINING SCHOOL</b></li><li>o <b>TRAINED TO WORK WITH A SPECIFIC DOG DURING THE SEARCH</b></li><li>o <b>MUST BE IN CONTROL OF THE DOG AT ALL TIMES.</b></li></ul>

Figure 1-6. Requirements for Use of Contraband Detecting Dog During a Search.

- o The inspection must have been previously scheduled.

An inspection must never be a “cover up” for a search for which there is no “probable cause.” Remember the “Fruit of the Poisonous Tree” doctrine? This states that evidence obtained from an illegal act cannot be admitted into court. Evidence obtained from an inspection which is a cover up for a search will result in evidence being excluded from court.

To eliminate this problem, schedule inspections far in advance. In this way, an inspection cannot be a cover up for a search for which there is no “probable cause.”

Another type of inspection is a “health and welfare” inspection. This is used to make sure that personnel and equipment are “at the ready.”

## GATE INSPECTIONS

Guard personnel may inspect persons, their property, and vehicles at installation entry and exit points. People entering an installation must be informed that they are subject to inspection. This can be done by posting a clearly displayed sign. In a foreign country, the sign should read in the host language and English.

When a commander establishes a gate inspection program, he or she should state:

- o Purpose of the program.
- o Scope of the inspection.
- o How the program should be carried out.

If an apprehension follows a gate inspection, a more extensive search can be made. Refer back to the “Searches Incident to Apprehension” portion of this subcourse.

Incoming civilian personnel cannot be inspected if they object. However, they will be denied entry to the installation. However, incoming military personnel can be inspected over their objection. Reasonable force may be used, if necessary, to conduct such an inspection.

Exiting civilians can be inspected over their objection. Reasonable force may be used if necessary. If an MP must use reasonable force, he or she must notify the commander at once.

Civilian personnel who are found to have unlawful weapons, contraband, or evidence of a crime should be detained. Detained civilian personnel should be transferred to civilian authorities as soon as possible.

Evidence obtained should be safeguarded. The topic of “evidence and its storage” will be discussed in detail later during this subcourse. As soon as civilian personnel are secured, notify the office of the staff judge advocate.

## CONFESSIONS AND ADMISSIONS

Admissions and confessions play a critical role in criminal prosecution. You must make sure MP protect the constitutional rights of any subject. Knowing and following the requirements and procedures will ensure the admissibility of evidence. The next section of this subcourse will cover requirements and procedures for rights warnings, waivers, and documentation.

As a supervisor, your knowledge of the requirements of rights warning procedures, confessions, and admissions must be greater than that of a patrol MP. This section will discuss the legal guidelines of self-incrimination. We will explore some of the reasons behind the rules. At the end of this section you should--

- o Understand the restrictive procedures which govern police conduct in this area.
- o Have a basic understanding of the social, political, and legal factors which cause changes in the balance between individual and societal rights.

### Basic Doctrine

The basic doctrine which guides laws, policies, and procedures in this area is--

- o The Fifth Amendment to the Constitution. "...nor shall any person be compelled in any criminal case to be a witness against himself."
- o Article 31, UCMJ.
  - "No person subject to this chapter may compel any other person to incriminate himself or to answer any question the answer to which may tend to incriminate him."
  - "No person subject to this chapter may interrogate or request any statement from an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial."
  - "No person subject to this chapter may compel any person to make a statement or produce evidence before any military tribunal, if the statement or evidence is not material to the issue and may tend to degrade him."
  - "No statement obtained from any person in violation of this article, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a trial by court-martial."

## Article 31 Protection

Article 31 protection coincides with the protection granted under the Fifth Amendment. It is a practical application of the Fifth Amendment to the military. Article 31 protection applies when two things are present:

- o Potential criminal penalty.
- o Oral statements and verbal acts.

### Oral Statements

Oral statements may be either an admission or a confession. Remember, admission is a self-incriminating statement that falls short of a complete acknowledgement of guilt. A confession is a complete acknowledgement of guilt.

### Verbal Act

A verbal act is functionally the same as a statement. When a suspect turns over evidence or points out evidence in response to a question or order, that is a verbal act. This verbal act is the functional equivalent of a statement. The exception to protection of Article 31 is when a lawful search is being conducted. For example, a suspect is being lawfully apprehended. The suspect is ordered to empty his or her pockets. This action is legal and does not come under the protection of Article 31. A verbal act is only protected when it relates to a testimonial utterance such as “uh huh” to mean “yes.”

### When Warnings are Required

One of the key factors you must remember regarding Article 31 is when the warnings are required. Defining when Article 31 rights should be given is subjective. The courts use both a subjective and objective test when deciding if the warnings were required. Given the facts and circumstances of a situation, would a reasonable law enforcement official focus attention on an individual as a possible suspect? Thus, either a subjective or objective factual situation will require compliance with Article 31.

### Suspicion as it Relates to Article 31

Suspicion is an important factor. When someone becomes a suspect in a case, he or she must have Article 31 rights read. It may be necessary to read these rights many times during an investigation.

Witnesses on the other hand do not need their rights read. They are not suspects. If a witness blurts out a statement that is not a result of questioning, that is called a “spontaneous admission” or “excited utterance.” Spontaneous admissions are admissible in court even though no rights warning was given. When it becomes clear that a witness may become a suspect, you may want to interrogate the witness. At this point, he or she must be advised of his or her rights before further interrogating or questioning. If he or she



is not issued Article 31 rights, statements he or she makes cannot be used against him or her in a court of law.

#### Who Must Give Warnings

Article 31 says “...no person subject to this Chapter may compel any other....” The Court of Military Appeals defines these persons as--

- o Law enforcement officers.
- o Officers.
- o Noncommissioned officers.

#### Circumstances of Questioning

When considering the rights warning issue, the Court of Military Appeals examines the circumstances of the questioning. It also examines the status of the person doing the questioning and the purpose behind the questioning. This is in keeping with Article 31. As a result, statements made between private individuals are not protected by Article 31.

There are personnel not covered by Article 31. Undercover personnel are not covered because none of the coercive circumstances which form the basis for the rule are present. However, if the undercover agent tried to avoid the rule and interrogate someone without giving the warnings, statements made by the suspect would be protected by Article 31. These statements would not be admissible evidence. This undercover exception does not apply in a custodial situation. In fact, a court may require Article 31 rights be read to a subject in custody before any conversation takes place. This is to ensure that any statement made by the person in custody be admissible as testimonial evidence in court. It also does not apply when the subject has retained an attorney for the case being questioned.

Article 31 requires three warnings. Reading Article 31 rights must include all three warnings. They are--

- o The nature of the accusation.
- o The right to remain silent.
- o That any statement made can be used against him or her.

Notice here that the right to have an attorney present during interrogation is not listed. The right to an attorney resulted from the law case of Miranda v. Arizona, 384 U.S. 436 (1966). In this case, the Supreme Court ruled that the right to remain silent was secured if the suspect had a lawyer present during interrogation. This is applicable to custodial interrogation and consultation before questioning. Later, the MIRANDA decision was applied to military law through the case of the U.S. v. Tempia, 16 CMR 629, 37 CMA 249 (1967). Based on the TEMPIA case, a suspect must be advised of the following rights:

- o To consult with a lawyer before answering any questions.
- o To have a lawyer present during questioning.

The portion of DA Form 3881 shown in Figure 1-7 includes requirements that stem from both Article 31 and Miranda v. Arizona. We will examine and discuss DA Form 3881 later during this learning event.

### Voluntary Waiver of Rights

When subjects choose to waive their constitutional rights, they must do so on a voluntary basis. If the waiver of rights is found invalid in court because it was not made voluntarily, all evidence obtained from the questioning will be inadmissible. If any of the following factors are present, a waiver or confession may be found to be involuntary:

- o Force (Brown v. Mississippi, 297 U.S. 278 (1935)).
- o Threat of force.

PART II - RIGHTS WARNING PROCEDURE	
THE WARNING	
1	<p><b>WARNING</b> - Inform the suspect/accused of:</p> <ul style="list-style-type: none"> <li>a. Your official position</li> <li>b. Nature of offense(s).</li> <li>c. The fact that he/she is a suspect/accused.</li> </ul>
2	<p><b>RIGHTS</b> - Advise the suspect/accused of his/her rights as follows</p> <p>"Before I ask you any questions, you must understand your rights "</p> <ul style="list-style-type: none"> <li>a. "You do not have to answer my questions or say anything "</li> <li>b. "Anything you say or do can be used as evidence against you in a criminal trial "</li> <li>c. (For personnel subject to the UCMJ) "You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer</li> </ul>
	<p>can be a civilian you arrange for at no expense to the Government or a military lawyer detailed for you at no expense to you, or both. "</p> <p>- or -</p> <p>(For civilians not subject to the UCMJ) You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer can be one you arrange for at your own expense, or if you cannot afford a lawyer and want one, a lawyer will be appointed for you before any questioning begins "</p> <ul style="list-style-type: none"> <li>d. "If you are now willing to discuss the offense(s) under investigation, with or without a lawyer present, you have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if you sign a waiver certificate "</li> </ul> <p>Make certain the suspect/accused fully understands his/her rights</p>

Figure 1-7. DA Form 3881, Rights Warning Procedure Portion.

- o Deprivation of basic needs such as food, sleep, or the use of the latrine.
- o An order such as a commander ordering the subject to tell the truth.
- o Promises such as an offer to "make a deal."
- o Coercion.
- o Tricks such as a second officer claiming a remark or statement to be "off the record." (Some tricks are permissible after the rights have been waived.)

## Tricking the Subject During Questioning

Sometimes MP investigators use special tactics while questioning a subject. “Tricking” a subject into issuing statements is one such tactic.

There is a fine line drawn between “tricks” that are permitted and “tricks” that are not permitted. For example, SPC Arhaid is arrested for burglary with his accomplice PVT Followalong. The two subjects are separated for questioning. Later, the MP investigator SGT Goodguy interrogates SPC Arhaid. SGT Goodguy tells SPC Arhaid that his accomplice, PVT Followalong, confessed that SPC Arhaid was involved in the burglary. PVT Followalong really did not make that statement. In the eyes of the law, is this a legal trick permissible to use to elicit a confession from SPC Arhaid? Yes, according to case Michigan v. Mosley, 423 U.S. 96 (1975) this tactic is legal. In this case, the Supreme Court refused to overturn a conviction based on an admission that was obtained using the same method intended to trap SPC Arhaid.

In the military, the test for permissibility of tricks is two-fold. Permissibility of tricks depends on--

- o Whether the trick was used to get the subject to sign a waiver. This type of trick is forbidden and protected by MIRANDA.
- o Whether the trick was used after a valid waiver of rights was signed. If this is the case, the trick must not be designed to elicit an untrue confession.

The basis for all confessions is the “voluntariness doctrine.” If the subject did not use free will while making a confession, the confession will be considered involuntary and invalid.

You must remember that the subject may, at anytime invoke his other right to silence or to an attorney. If the subject invokes these rights, all questioning must stop immediately. However, later the subject may elect to change his or her mind and discuss the matter.

## Reinitiating Questioning

An amendment to MRE 305(e) and recent case law dictates that law enforcement officials employ a new analysis in cases where they wish to question subjects who are represented by an attorney. Previously, MRE 305(e) and the case of U.S. v. McOmber, 1 MJ 380 (C.M.A. 1976), required that if the subject had seen a lawyer and law enforcement officials wanted to question the subject, notice and reasonable opportunity to attend the interrogation had to be given to the lawyer before the interrogation could proceed.

Application of the McOmber Rule has now been limited to government initiated interrogations. In U.S. v. LeMasters, 39 M.J. 490 (C.M.A. 1994), CMA stated that MRE 305(e) is triggered when a person subject to the Code “intends to question” someone. This language was designed to protect the right to counsel when the police initiate the interrogation. If the subject initiates the

discourse and prosecution can show the subject was aware of his right to have his counsel notified and present, but that he affirmatively waived those rights, then a valid waiver under MRE 305(g)(1) can be found. It should be noted, however, that the restructuring of MRE 305 under Change 7 to the MCM completely removed the McOmber Notice to Counsel requirement. The affect of this removal has not yet been felt in the case law.

Therefore, depending upon the circumstances, once a subject invokes his right to remain silent or requests an attorney, you may be able to reinitiate questioning.

1. If the subject is not being subjected to custodial interrogation and charges have not been preferred and he:

a. Invokes his right to silence, questioning must immediately cease. MRE 305(f)(1). The government may reinitiate questioning after a significant period of time. Michigan v. Mosley, 423 US 96, 46 L.Ed 2d 313, 96 S Ct 321 (1975).

b. Requests an attorney,

(1) questioning must cease until counsel is present. MRE 305(f)(2); Minnick v. Mississippi, 498 U.S. 146 (1990).

(2) The subject may reinitiate contact and affirmatively waive his right to have counsel present. U.S. v. LeMasters, 39 MJ 490 (CMA 1994). The investigator should annotate this affirmative waiver in the comments section of DA Form 3881.

2. If the subject is being subjected to custodial interrogation and he:

a. invokes his right to remain silent, (but does not request an attorney)

(1) questioning must cease immediately.

(2) The government may reinitiate questioning after a significant period of time. Michigan v. Mosley, 423 US 96, 46 L.Ed 2d 313, 96 S Ct 321 (1975).

b. invokes his right to an attorney,

(1) questioning must cease immediately.

(2) counsel must be present before any subsequent interrogation may proceed. MRE 305(e)(2).

(3) There can be a valid waiver of the right to counsel if the government can show the subject reinitiated the questioning and there was a break in custody between the request for counsel and the subsequent waiver. MRE (g)(2)(B).

3. If charges have been preferred against the subject and he:

a. invokes his right to remain silent,

(1) questioning must cease immediately.

(2) The government may reinitiate questioning after a significant period of time. Michigan v. Mosley, 423 US 96, 46 L.Ed 2d 313, 96 S Ct 321 (1975).

(3) The subject may reinitiate contact and affirmatively waive his right to have counsel present. U.S. v. LeMasters, 39 MJ 490 (CMA 1994). The investigator should annotate this affirmative waiver in the comments section of DA Form 3881.

b. invokes his right to counsel,

(1) question must cease immediately.

(2) counsel must be present before any subsequent interrogation may proceed. MRE 305(e)(2).

(3) The subject may reinitiate contact and affirmatively waive his right to have counsel present. MRE 305(g)(2)(c). The investigator should annotate this affirmative waiver in the comments sections of DA Form 3881.

This area of the law is in a state of change. If you have questions concerning when you may reinitiate questioning, consult your servicing office of the Staff Judge Advocate.

## Rights Waiver

The issuing of MIRANDA and Article 31 rights protect a subject's right to silence. However, these protective rights do not forbid a subject to issue statements. A person is always free to speak or otherwise cooperate if he or she so wants. If the person wants to discuss the case, he or she then agrees to “give up” or “waive” the right to silence. In order to be legal, this waiver of rights must meet two tests:

- o It must be knowingly made.
- o It must be voluntarily made.

## Knowingly Made Rights Waiver

A “knowingly made” waiver of rights requires that the subject--

- o Knows and understands the rights he or she is giving up.
- o Must have the competency, by way of age and mentality, to understand the results of giving up his rights.

It is your responsibility as a law enforcement officer to ensure that the subject meets these requirements.

#### Documentation

DA Form 3881 (Rights Warning Procedure/Waiver Certificate) is the form used to document the waiving of a subject's rights or the refusal to waive one's rights. Examine the front and back portions of the form provided in Figures 1-8 and 1-9. Notice that DA Form 3881 consists of three major portions. The top portion discloses data required by the Privacy Act. This data is--

- o Authority.
- o Principal purpose.
- o Routine uses.
- o Disclosure.

It also requests other identifying information. Look again at Figure 1-8 and locate the appropriate section for filling in--

- o Location.
- o Name.
- o Social security number (SSN).
- o Grade/status.
- o Date.
- o Time.
- o File number.
- o Organization or address.

Next, examine Figure 1-9, the back of DA Form 3881. This side consists of Section B, Rights Warning Procedure, which includes--

- o The warning.
- o The waiver.
- o Special instructions.

<b>RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE</b> <small>For use of this form, see AR 190-30; the proponent agency is ODCSOP6</small>			
DATA REQUIRED BY THE PRIVACY ACT			
<b>AUTHORITY:</b> Title 10, United States Code, Section 3012(g)		<b>PRINCIPAL PURPOSE:</b> To provide commanders and law enforcement officials with means by which information may be accurately identified.	
<b>ROUTINE USES:</b> Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.		<b>DISCLOSURE:</b> Disclosure of your Social Security Number is voluntary.	
1. LOCATION <u>FT BLANK, AL</u>	2. DATE <u>910412</u>	3. TIME <u>1240</u>	4. FILE NO. <u>31421-91</u>
5. NAME (Last, First, MI) <u>BONNET ROBERT L</u>		8. ORGANIZATION OR ADDRESS <u>CoD 781st SUP BN</u> <u>FT BLANK, AL 36201</u>	
6. SSN <u>018-32-1196</u>	7. GRADE/STATUS <u>E-4</u>		
PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE			
<b>Section A. Rights</b>			
The investigator whose name appears below told me that he/she is with the United States Army <u>MILITARY</u> and wanted to question me about the following offense(s) of which I am suspected/accused: <u>POLICE LARCENY</u>			
Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:			
1. I do not have to answer any questions or say anything. 2. Anything I say or do can be used as evidence against me in a criminal trial. 3. (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both. <div style="text-align: center;">- or -</div> (For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins. 4. If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.			
5. COMMENTS (Continue on reverse side)			
<b>Section B. Waiver</b>			
I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.			
WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE	
1a. NAME (Type or Print)	SAMPLE	4. SIGNATURE OF INVESTIGATOR <u>Edward C Middlebury</u>	
b. ORGANIZATION OR ADDRESS AND PHONE		5. TYPED NAME OF INVESTIGATOR <u>EDWARD C. MIDDLEBURY</u>	
2a. NAME (Type or Print)		6. ORGANIZATION OF INVESTIGATOR <u>99th MP Co</u>	
b. ORGANIZATION OR ADDRESS AND PHONE			
<b>Section C. Non-waiver</b>			
1. I do not want to give up my rights. <input checked="" type="checkbox"/> I want a lawyer <span style="margin-left: 100px;"><input checked="" type="checkbox"/> I do not want to be questioned or say anything</span>			
2. SIGNATURE OF INTERVIEWEE <u>Robert L Bonnet</u>			
ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT (DA FORM 2823) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED			

DA FORM 3881, NOV 89

EDITION OF NOV 84 IS OBSOLETE

Figure 1-8. DA Form 3881, Rights Warning Procedure/Waiver Certificate (Front).

When you issue the actual warning, do not issue a memorized version. Read the warning directly from Section B on the back of DA Form 3881.

PART II - RIGHTS WARNING PROCEDURE	
<b>THE WARNING</b>	
<p>1. <b>WARNING</b> - Inform the suspect/accused of:</p> <ul style="list-style-type: none"> <li>a. Your official position.</li> <li>b. Nature of offense(s)</li> <li>c. The fact that he/she is a suspect/accused.</li> </ul> <p>2. <b>RIGHTS</b> - Advise the suspect/accused of his/her rights as follows:</p> <p>"Before I ask you any questions, you must understand your rights."</p> <ul style="list-style-type: none"> <li>a. "You do not have to answer my questions or say anything."</li> <li>b. "Anything you say or do can be used as evidence against you in a criminal trial."</li> <li>c. (For personnel subject to the UCMJ) "You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer</li> </ul>	<p>can be a civilian you arrange for at no expense to the Government or a military lawyer detailed for you at no expense to you, or both."</p> <p style="text-align: center;">- or -</p> <p>(For civilians not subject to the UCMJ) You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer can be one you arrange for at your own expense, or if you cannot afford a lawyer and want one, a lawyer will be appointed for you before any questioning begins."</p> <ul style="list-style-type: none"> <li>d. "If you are now willing to discuss the offense(s) under investigation, with or without a lawyer present, you have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if you sign a waiver certificate."</li> </ul> <p>Make certain the suspect/accused fully understands his/her rights</p>
<b>THE WAIVER</b>	
<p>"Do you understand your rights?"</p> <p>(If the suspect/accused says "no," determine what is not understood, and if necessary repeat the appropriate rights advisement. If the suspect/accused says "yes," ask the following question.)</p> <p>"Have you ever requested a lawyer after being read your rights?"</p> <p>(If the suspect/accused says "yes," find out when and where. If the request was recent (i.e., fewer than 30 days ago), obtain legal advice on whether to continue the interrogation. If the suspect/accused says "no," or if the prior request was not recent, ask him/her the following question.)</p>	<p>"Do you want a lawyer at this time?"</p> <p>(If the suspect/accused says "yes," stop the questioning until he/she has a lawyer. If the suspect/accused says "no," ask him/her the following question.)</p> <p>"At this time, are you willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer and without having a lawyer present with you?" (If the suspect/accused says "no," stop the interview and have him/her read and sign the non-waiver section of the waiver certificate on the other side of this form. If the suspect/accused says "yes," have him/her read and sign the waiver section of the waiver certificate on the other side of this form.)</p>
<b>SPECIAL INSTRUCTIONS</b>	
<p><b>WHEN SUSPECT/ACCUSED REFUSES TO SIGN WAIVER CERTIFICATE</b> If the suspect/accused orally waives his/her rights but refuses to sign the waiver certificate, you may proceed with the questioning. Make notations on the waiver certificate to the effect that he/she has stated that he/she understands his/her rights, does not want a lawyer, wants to discuss the offense(s) under investigation, and refuses to sign the waiver certificate.</p> <p><b>IF WAIVER CERTIFICATE CANNOT BE COMPLETED IMMEDIATELY</b> In all cases the waiver certificate must be completed as soon as possible. Every effort should be made to complete the waiver certificate before any questioning begins. If the waiver certificate cannot be completed at once, as in the case of street interrogation, completion may be temporarily postponed. Notes should be kept on the circumstances.</p> <p><b>PRIOR INCRIMINATING STATEMENTS</b></p> <ul style="list-style-type: none"> <li>1. If the suspect/accused has made spontaneous incriminating statements before being properly advised of his/her rights he/she should be told that such statements do not obligate him/her to answer further questions.</li> </ul>	<p>2. If the suspect/accused was questioned as such either without being advised of his/her rights or some question exists as to the propriety of the first statement, the accused must be so advised. The office of the serving Staff Judge Advocate should be contacted for assistance in drafting the proper rights advisal.</p> <p><b>NOTE</b> If 1 or 2 applies, the fact that the suspect/accused was advised accordingly should be noted in the comment section on the waiver certificate and initialed by the suspect/accused.</p> <p><b>WHEN SUSPECT/ACCUSED DISPLAYS INDECISION ON EXERCISING HIS OR HER RIGHTS DURING THE INTERROGATION PROCESS</b> If during the interrogation, the suspect displays indecision about requesting counsel (for example, "Maybe I should get a lawyer."), further questioning must cease immediately. At that point, you may question the suspect/accused only concerning whether he or she desires to waive counsel. The questioning may not be utilized to discourage a suspect/accused from exercising his/her rights (For example, do not make such comments as "If you didn't do anything wrong, you shouldn't need an attorney.")</p>
<p>COMMENTS (Continued)</p> <div style="border: 1px solid black; height: 100px; width: 100%;"></div>	

REVERSE OF DA FORM 3881

GPO : 1990-261-871/702685

Figure 1-9. DA Form 3881, Rights Warning Procedure/Waiver Certificate (BACK).



Whether or not an interrogation can continue depends on how the Waiver Certificate is filled out. There are three ways to complete this section based on the three choices a subject has. These are discussed below.

- o An interrogation can continue if the subject signs the waiver. See Figure 1-10. The subject signs the waiver section first. Next, the investigator signs. Finally, a witness should sign in the appropriate place.

<b>Section B. Waiver</b>	
I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.	
WITNESSES (If available)	
1a. NAME (Type or Print) RAYMOND CUNNINGHAM <i>Raymond Cunningham</i>	3. SIGNATURE OF INTERVIEWEE <i>James K. Shumate</i>
b. ORGANIZATION OR ADDRESS AND PHONE Ft. McClellan FO, Third Region, USACIDC Ft. McClellan, AL 36205 (238-5583)	4. SIGNATURE OF INVESTIGATOR <i>Paul E. Coffey</i>
2a. NAME (Type or Print) PETER J. KLINE <i>Peter J. Kline</i>	5. TYPED NAME OF INVESTIGATOR PAUL E. COFFEY
b. ORGANIZATION OR ADDRESS AND PHONE SJA, Ft. McClellan, AL 36205 (238-3222)	6. ORGANIZATION OF INVESTIGATOR Ft. McClellan FO, Third Region, USACIDC Ft. McClellan, AL 36205
<b>Section C. Non-waiver</b>	
1 I do not want to give up my rights <input type="checkbox"/> I want a lawyer <input type="checkbox"/> I do not want to be questioned or say anything	
2 SIGNATURE OF INTERVIEWEE	
ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT (DA FORM 2823) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED	
DA FORM 3881, NOV 89 EDITION OF NOV 84 IS OBSOLETE	

Figure 1-10. Signed Waiver.

- o An interrogation can continue if the subject agrees to waive his or her rights but refuses to sign the certificate (see Figure 1-11). If this is the case, you must note that the subject--
  - Understands his or rights and does not want a lawyer.
  - Wants to discuss the offense or make an oral statement.
  - Refuses to sign the waiver.

<b>Section B. Waiver</b>	
I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.	
WITNESSES (If available)	
1a. NAME (Type or Print) MARCEL VANDERHOEVAN <i>Marcel Vanderhoevan</i>	3. SIGNATURE OF INTERVIEWEE
b. ORGANIZATION OR ADDRESS AND PHONE Ft. McClellan FO, Third Region, USACIDC Ft. McClellan, AL 36205 (238-5583)	4. SIGNATURE OF INVESTIGATOR <i>Reese E. Farrish</i>
2a. NAME (Type or Print)	5. TYPED NAME OF INVESTIGATOR REESE E. FARRISH
b. ORGANIZATION OR ADDRESS AND PHONE	6. ORGANIZATION OF INVESTIGATOR Ft. McClellan FO, Third Region, USACIDC Ft. McClellan, AL 36205
<b>Section C. Non-waiver</b>	
1 I do not want to give up my rights <input type="checkbox"/> I want a lawyer <input type="checkbox"/> I do not want to be questioned or say anything	
2 SIGNATURE OF INTERVIEWEE	
ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT (DA FORM 2823) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED	
DA FORM 3881, NOV 89 EDITION OF NOV 84 IS OBSOLETE	

Figure 1-11. Rights Waived but Subject Refuses to Sign.

- o An interrogation cannot continue if the subject does not wish to be questioned or wants a lawyer. (See Figure 1-12.) The subject must check which reason applies in the nonwaiver section and sign his or her name. Remember that a suspect not in custody can leave any time if he or she does not want to cooperate.

<b>Section B. Waiver</b>	
I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.	
WITNESSES (if available)	3. SIGNATURE OF INTERVIEWEE
1a. NAME (Type or Print)	4. SIGNATURE OF INVESTIGATOR
b. ORGANIZATION OR ADDRESS AND PHONE	
2a. NAME (Type or Print)	5. TYPED NAME OF INVESTIGATOR
b. ORGANIZATION OR ADDRESS AND PHONE	6. ORGANIZATION OF INVESTIGATOR
<b>Section C. Non-waiver</b>	
1. I do not want to give up my rights: <input checked="" type="checkbox"/> I want a lawyer. <input checked="" type="checkbox"/> I do not want to be questioned or say anything.	
2. SIGNATURE OF INTERVIEWEE <i>I. Will Knott</i>	
ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT (DA FORM 2823) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED.	
DA FORM 3881, NOV 89 EDITION OF NOV 84 IS OBSOLETE	

Figure 1-12. Refusal to Waive Rights.

#### Effects of Violation

Constitutional laws that control police conduct have provoked much debate. It may sometimes seem that the rules related to police interrogation and the taking of admissions and confessions are difficult to deal with. Sometimes police officials choose to ignore these rules. At other times, police officials try to get around the rules that control police conduct. It is imperative that you remember that these rules are the law. You and the MP you supervise must comply completely with the letter and spirit of the law. If the laws of police conduct are not followed, there may be serious results. The effects of rights violations are--

- o Inadmissibility of evidence.
- o Necessity of issuing curative warnings. Curative warnings are procedural steps that may help to overcome the violation of a subject's rights.

#### Inadmissibility

A subject of a police investigation has rights to appropriate warnings, a lawyer, and fundamental fairness. If any of these rights are violated, the court will apply two rules we have already learned about in Part A. The rules the court will apply are the--

- o Exclusionary rule. Evidence that is obtained in a way that violates the Fourth Amendment will not be admitted into court.
- o Doctrine of the “Fruit of the Poisonous Tree.” Evidence that is obtained illegally will not be admissible in court.

These are court-made rules of evidence. There are also other rules that apply. Those rules are found in Article 31 (d), UCMJ.

- Rule 1: “No person subject to this chapter may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.”
- Rule 2: “No person subject to this chapter may interrogate, or request any statement from an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.”
- Rule 3: “No person subject to this chapter may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.”
- Rule 4: “No statement obtained from any person in violation of this article, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a trial by court-martial.”

When the rules of Article 31 are violated, evidence will not be admitted in court.

#### Curative Warnings

Sometimes the effects of a violation of rights can be overcome. “Curative warnings” are used for this purpose. Using the procedure of curative warnings means that you start all over again. You must--

- o Use a new investigator.
- o Read the subject the Article 31 rights.
- o Obtain the subject's statement.
- o Advise the subject that previous statements cannot be used against him or her.
- o Advise the subject that previous statements do not obligate him or her to answer further questions.

The subject may sign another waiver of rights based on these curative warnings. This second waiver must meet the tests we discussed earlier. Remember that tests for legal waiver of rights order that the subject waives his or her rights--

- o Voluntarily.
- o Knowing and understanding the rights he or she is giving up.

#### Right to Counsel

Remember that a subject has the right to a lawyer prior to and during--

- o Any interrogation or questioning.
- o The identification process.

This right is founded on the Sixth Amendment. "In all criminal prosecutions the accused shall... Have the assistance of counsel for his defense." The purpose of having a lawyer present is to ensure due process of law. "Due process" means "fundamental fairness." For civilians, this right arises after legal proceedings have begun. For military personnel, this right arises after--

- o Charges have been preferred.
- o The subject is in pretrial custody.

The difference between civilian and military law is based on MRE 321. In the military, due process is based on the Sixth Constitutional Amendment and the Military Rules of Evidence.

#### Identification Process

Identification procedures can be part of the legal process. It is important that identification procedures:

- o Not be "suggestive."
- o Reduce the possibilities of misidentification.

There are various types of identification procedures. They are lineups, photographic arrays, and one-on-one showings.

These procedures could lead to evidence that could result in an admission or confession. However, a subject's right to have a lawyer present during an identification procedure is restricted. The courts feel that some identification procedures permit manipulation of the circumstances. Other procedures permit a greater degree of "suggestive characteristics." Examples of manipulation and suggestive characteristics will follow. These are the

types of identification procedures that permit a “right to counsel.” Lineups are a type of identification procedure that permits a “right to counsel.”

## Lineups

Lineups are subject to gross manipulation. Therefore, a subject has a right to have his or her lawyer present during a lineup only when the line up is conducted after pretrial restraint. Characteristics of a lineup that can be manipulated are--

- o Composition (the types of people displayed for comparison).
- o Time.
- o Manner.

In a law case Martinez v. Turner, 461 F. 2d 261 (10th CIR 1972), the court found the lineup procedures used by the police to be “impermissible suggestive.” In this lineup, the suspected subject was tremendously taller than the other men. The goal of this manipulation was to focus attention on the suspect. What would be the manipulation in the following lineup? After a burglary, the victim identified the subject to be a black male. A few days later, the victim is called into the MP station to identify the suspect. A lineup procedure is used. In this lineup, all of the men are white, except the suspect who is black.

The “manipulation” or “suggestion” is obvious. The black suspect could be identified as the burglar since he was the only black man there.

Because of these types of “manipulations” or “suggestibility” of lineup, a subject has a right to have a lawyer present. The lawyer can only observe. He can make recommendations but the investigators are not obligated to follow them.

Subjects do not have a right to have an attorney present for photographic arrays and one-on-one showings.

Photographic arrays cannot be manipulated the way lineups can. However, the procedure of showing photographs to victims or witnesses can be manipulated. The case of State v. Wallace, 285 So. 2d 796 (1973) is an example. The witness was told that the people charged were in the group of pictures she was given. There was an obvious tendency to cooperate by making an identification.

One-on-one showings do not require a lawyer to be present. One-on-one showings usually happen without planning. The act of calling a lawyer would ruin the spontaneity of the situation. The court examines one-on-one identification procedures carefully. Each case is considered individually. In the case of Smith v. Coiner, 473 E. 2d 877 (4th CIR 1972), the court did not allow the identification. The circumstances of this case were as follows:

A woman was raped. After the rape, she went to her doctor's office. The man suspected of committing the rape was brought to the doctor's office. He was presented to the woman for identification. The court felt that the possibility to make a mistake in identification was great because of--

- o Emotional anguish.
- o Trauma.
- o Surrounding environment.

The case of Stanley v. Cox, 486 F. 2d 48 (4th CIR 1973) is different. The court accepted the identification as reliable in this case. The circumstances of this case were as follows:

One hour after a robbery, a suspect was brought to the scene. The store owner identified the suspect.

Let's examine the differences between the first and second cases. The major differences were:

- o The state of emotional upset in the rape case was greater than in the robbery.
- o The store owner saw the suspect at the scene. The rape victim was not at the scene when shown the suspect.

There are no “hard and fast” rules to use for one-on-one identifications. You must use your common sense every time. You must consider the “totality of the circumstances” when considering a one-on-one identification.

Identification procedures can result in evidence that could convict someone of a crime. Consequently, any violation of rights due a person could result in evidence being inadmissible in court.

#### PART C - PLAIN VIEW DOCTRINE

So far our discussion has focused heavily on the constitutional protection given to persons being searched or identified. We have examined a variety of situations. Some of the situations discussed have been--

- o Searches that require search authorization.
- o Searches incident to apprehension.
- o “Stop and frisk” searches.

The next topic of discussion will be search and seizure under the rules of the Plain View Doctrine.

## PLAIN VIEW DOCTRINE

The Plain View Doctrine refers to the seizure of evidence that is open to view. There are three requirements for the Plain View Doctrine. All requirements must be met. The three requirements for the Plain View Doctrine are-

- o An MP or other government official must be legitimately located when he or she views an item.
- o Prior justification for an intrusion to seize evidence must be present.
- o The item to be seized must lead to criminal prosecution.

### Prior Justification to Search

Given the Fourth Amendment, a subject's right to privacy cannot be invaded. However, if an MP is in a legitimate place when he or she spots an item, he or she can legally seize it. This seizure must be based on a reasonable belief that the item was connected to criminal activity. Consider the following scenario: PVT Ayes, an MP in your section, spots PVT Dumkauf speeding near a set of quarters. After stopping PVT Dumkauf, MP Ayes spots a plastic bag full of white, powdery substance. Under the Plain View Doctrine, could MP Ayes seize the white powder and hold it as evidence? Yes. Because MP Ayes was in a legitimate place, he could seize the evidence.

### Prior Justification for an Intrusion to Seize Evidence

Later, on his way home, MP Ayes walks past the BEQ area.

Through an open window he spots several plastic bags full of a green leafy substance. PVT Ayes is off-duty and does not have a search authorization. Under the Plain View Doctrine, could PVT Ayes enter the BEQ room and seize the material as evidence? No, he may not enter the room without a search authorization. He was not in a legitimate position when he made the observation. However, he may use his observation to get a search authorization. After getting the search authorization, he may go back and conduct a legal search.

### Seized Evidence Must Lead to Criminal Prosecution

Before seizing anything as evidence, the MP must believe it is connected with criminal activity. Consider the following scenario:

MP Ayes has a search authorization. He is looking for missing M16 rifles and government typewriters. MP Ayes enters PVT Dumkauf's quarters and searches the hall closet. In the closet, Ayes finds a bag of heroin. Later, in the den, MP Ayes spots a color TV. He checks the serial number on the back. A few days later, MP Ayes learns that the TV is stolen. Ayes comes to you for advice. Can MP Ayes seize the heroin? Can MP Ayes seize the TV set? What would you advise MP Ayes to do? Under the Plain View Doctrine, Ayes could

seize the heroin but not the TV set. Ayes was in a legitimate place. He was carrying out a search authorization. He was in the closet looking for large items. That action was within the scope of the search authorization. He unintentionally found the heroin. Based on his experience as an MP, Ayes believed the bag to contain heroin or some other contraband. Given these considerations, seizure of the heroin is valid. In contrast, Ayes cannot seize the TV set. It is true that Ayes was legally in Dumkauf's quarters. However, he had no reason to believe that the TV set was stolen. Therefore, there was no criminal connection at the time of the view. MP Ayes cannot seize the TV set. He can, however, use the facts to support "probable cause." With "probable cause" established, he can get a search authorization. With the search authorization, MP Ayes can return to the quarters to search for the TV.

Compare the above scenario with the following case.

CID Investigator Bane is at the post guest house. There has been a fire and arson is suspected. While checking through the ashes, Investigator Bane looks through the open door of Room 13. He sees a clear plastic bag full of what appears to be marijuana sitting on a desk. Can Investigator Bane seize the bag as evidence from the occupant of the room, PFC Haid?

Yes. The seizure is legal under the Plain View Doctrine. Investigator Bane--

- o Was in the situation legally.
- o Stumbled across the evidence while looking for other evidence.
- o Believed the evidence to be marijuana. Possession of marijuana can lead to criminal prosecution.

In this analysis, Investigator Bane has satisfied all three elements of the Plain View Doctrine.

Evidence that is seized following the requirements of the Plain View Doctrine is legal. Consequently, this evidence is admissible in a court.



## LESSON 1

### PRACTICE EXERCISE

#### INSTRUCTIONS

You have just finished reading the instructional material for Lesson 1. This lesson covered searches and seizures. It is now time to check your understanding of the lesson. This is done by completing the practice exercise below. All of the questions are multiple-choice and are intended to measure your understanding of searches and seizures. There is only one correct answer to each question. Try to answer all of the questions without referring to the lesson materials.

When you have completed all the questions, turn the page and check your answers against the correct responses. Each correct response is referenced to a specific portion of the lesson material. Review any questions you have missed or do not understand. When you have completed your review, continue to the next lesson.

**SITUATION:** PVT Arhaid enters his room one day after work. He wants to listen to his new cassette tape player but it is gone. PVT Arhaid's roommate tells him that SPC Dumkauf took his new cassette tape player. PVT Arhaid goes into SPC Dumkauf's room and gets his cassette tape player back.

1. In going into SPC Dumkauf's room and taking his tape player back, has PVT Arhaid violated the Fourth Amendment?

- A. Yes, he has. He did not have a search warrant.
- B. No, he did not. Since PVT Arhaid is not an MP or police agent, he is considered a private party.
- C. Yes, he has. It is the same as breaking and entering and he is a private party.
- D. No, he did not. The door was unlocked and he is a private party.

**SITUATION:** You are an MPI supervisor. When you arrive home from work, you receive a phone call from your best friend WO Howie. WO Howie is upset because CPT Doodie took his golf clubs. WO Howie wants you to go into CPT Doodie's garage and get his golf clubs back.

2. If you go into CPT Doodie's garage and seize the stolen golf clubs, would you be in violation of the Fourth Amendment?

- A. No, you would not, because you were not on duty at the time.
- B. No, you would not, because you were on duty at the time.
- C. Yes, since you are an MPI supervisor, a search and seizure without appropriate authorization would be in violation of the Fourth Amendment.
- D. Yes, only because you are not in uniform.

SITUATION: SGT Case is a military police investigator. SGT Billingham has mailed a large brown envelope by first class mail from a military post office. You are sure that this envelope contains contraband.

3. As an MPI does Case have the right to open the envelope that SGT Billingham deposited into the US military mail system?
- A. Yes, because it is in the US military mail system, still on a US military base.
  - B. Yes, because being an MPI, Case has authorization of the provost marshal.
  - C. No, because the provost marshal did not give authorization in writing.
  - D. No, because no person other than a duly authorized employee of the Dead Letter Office, or other person upon a search warrant authorized by law may open a letter not addressed to him.
4. As an MPI, Case had probable cause and a search warrant to search SGT Billingham's desk. SGT Billingham has a large brown envelope ready to mail. It is addressed and sealed. Can Case open this envelope?
- A. No, because it is addressed and sealed ready for mailing.
  - B. No, because the addressee has to be present when opened.
  - C. Yes, because it is personal property, and has not entered the postal channels.
  - D. Yes, because it was in his desk, and anything in a desk can be opened, at any time.
5. SGT Case has a search warrant and is searching PVT James' locker. Case finds a stack of letters from James' girl friend. Can Case search these letters?
- A. No, because they are letters that came in the US mail system.
  - B. Yes, because they are no longer in the US mail system. Once delivered, they are personal property.
  - C. Yes, because being an MPI, Case has the right to open mail at anytime.
  - D. Yes, but only the ones that have no stamps on them.

SITUATION: You are supervising an investigation of a theft that happened at Fort Bragg. The PVT you are investigating lives off post. On visiting his residence, you find him out. His landlord is at home in the next apartment. Eager to help, the landlord opens the private's apartment. He gives you permission to search the apartment.

6. Is the search of the private's apartment a legal search IAW the "consent to search" law?
- A. Yes, because the landlord gave permission to search.
  - B. Yes, because it is off post.
  - C. No, because the landlord cannot consent to search of property he has rented.
  - D. No, because only civilian police can conduct a search off post.

SITUATION: An MP under your supervision reports to you a search of hanger work spaces he conducted earlier in the day. The MP had learned about a theft of tools from another hanger and that the tools could be in the work spaces of the hanger he had searched. The MP received permission from the supervisor of the hanger to search all work spaces.

7. Was the search that was conducted by the MP legal under the consent to search law?
  - A. No, the MP must have permission from the commanding officer.
  - B. Yes, it is legal to search a work area with the permission of the supervisor of the work area.
  - C. Yes, MP can search any part of the base without permission, at any time.
  - D. No, the MP must be accompanied by a commissioned officer.
  
8. You are a supervisor of an MPI unit stationed in a foreign country. You explain to your unit that a search and seizure may be authorized IAW with Army regulation?
  - A. AR 27-10.
  - B. AR 190-5.
  - C. AR 190-22.
  - D. AR 195-5.

## LESSON 1

### PRACTICE EXERCISE

#### ANSWER KEY AND FEEDBACK

<u>Item</u>		<u>Correct Answer and Feedback</u>
1.	B.	No, he did not. Since PVT Arhaid is not an MP or police... No, he has... (page 1-3, para 1)
2.	C.	Yes, since you are an MPI supervisor, a search and... Since you are... (page 1-3, para 3)
3.	D.	No, because no person other than a duly authorized... It reads... (page 1-7, para 5)
4.	C.	Yes, because it is personal property, and has not... If a letter... (page 1-7, para 7)
5.	B.	Yes, because they are no longer in the US mail system... After letters... (page 1-8, para 1)
6.	C.	No, because the landlord cannot consent to search of... Landlords cannot... (page 1-9, para 4)
7.	B.	Yes, it is legal to search a work area with the... Employers can... (page 1-9, para 3)
8.	C.	AR 190-22. When the... (page 1-3, para 5)

## LESSON 2

### DIRECT EVIDENCE HANDLING

Critical Task: 03-3758.00-8020

#### OVERVIEW

##### LESSON DESCRIPTION:

In this lesson you will learn the procedures to properly handle evidence.

##### TERMINAL LEARNING OBJECTIVE:

ACTION:	Learn the procedure to properly handle evidence.
CONDITION:	You will have this subcourse, paper and pencil.
STANDARD:	To demonstrate competency of this task you must achieve a minimum score of 70 percent on the subcourse examination.
REFERENCES:	The material contained in this lesson was derived from the following publication: AR 195-5.

#### INTRODUCTION

In Lesson 1, you learned that evidence was seized for the purpose of criminal prosecution. Great care to protect the constitutional rights of a subject must be taken when seizing evidence. This is to ensure that evidence you seize will be admitted into court. Seizure of the evidence is only the first step. Knowledge and skill in other aspects of dealing with evidence is important. Careful handling and storage of evidence will ensure that it is admitted into court.

In this lesson, you will learn the policies and procedures of--

- o Collection of evidence and contraband.
- o Storage of evidence and contraband.
- o Disposition of evidence and contraband.

For your reference, a list of definitions is provided in Appendix A at the end of this subcourse.

## PART A - EVIDENCE OVERVIEW

Very often the collection of evidence begins at the crime scene. The next section of this subcourse will discuss specific features of the crime scene.

### PRESERVING THE SCENE

The success of a case depends heavily on initial actions and observations taken by the first investigator to arrive at the crime scene. Although the actions taken to find and preserve physical evidence will vary from case to case, certain procedures apply to all cases.

As you approach the scene your actions should be calm and deliberate. Always expect the worst. It is better to take too many precautions at the crime scene than it is to take too few. Keep an open mind about the crime. Reaching conclusions too soon may lead to carelessness and false moves, which may be disastrous. Errors in safeguarding and inspecting the crime scene can never be corrected.

If there are injured persons at the crime scene, get them medical aid first. If enough MPs are on hand, the steps needed to protect the crime scene should begin as you give aid to the injured or examine the dead.

You must prevent unneeded walking about. Take precautions to prevent walking in areas that are likely to bear the impressions of footprints or tire tracks. Use caution and avoid places where possible clues may be found. Avoid touching doors, doorknobs, light switches, floors, and windows. Avoid using the telephone or smoking at the scene. Do not use the toilet, turn on the water, or use towels at the crime scene. The criminal may have used the bathroom. He may have used towels to wipe bloodstains from himself or his weapons. Or there may be blood caught in the sink or commode trap.

If you are an MP investigating a crime that will require the services of a USACIDC special agent, you must protect the scene until help arrives. Do not move any items or disturb the bodies of deceased persons. Usually, you cover a body only after it has been fully processed for evidence. If you cover it too soon, you could change or destroy valuable trace evidence. Do not touch items or surfaces that are likely to yield latent fingerprints. Do not allow any item to be removed from the scene without specific permission from the crime scene investigator or the crime lab examiner who is in charge of the case. Restrictions must not be lifted until the person in charge has specifically released the crime scene or, at least, until the search is done.

In extreme cases, you may need to move things that could be evidence from areas where they might be destroyed or drastically affected by the elements or other unavoidable circumstances. However, moving evidence before it has been fully examined and processed should be avoided if possible. If you move evidence prematurely, its original position should be recorded in your notes. Take closeup photographs if you can.

Helping victims, apprehending suspects, detaining witnesses, and requesting needed assistance are integral parts of the actions taken by the first MP or investigator on the scene. You must ensure that victims and witnesses are treated with dignity and consideration. Be sure to tell them of services available to them from the victim and witness liaison at SJA. Provide them with other assistance indicated by circumstances and allowed by AR 27-10. See AR 190-30 for specific guidance.

Keep suspects and witnesses separated if possible. Tell witnesses not to discuss the events. If witnesses talk to each other, they may distort each other's impressions. They may come to think they saw things that they really did not see or that never took place. And you should not discuss the crime with witnesses and bystanders. Your doing so could jeopardize the case. But listen attentively and unobtrusively. By being alert you can often pick up information of vital importance to the case.

Do not discuss the crime with the news media. Never give information to reporters. Informing the news media is the duty of the public affairs officer. Your stated reason for declining to give information should be that you do not want to show favoritism. Referring to standing orders that prohibit you from talking to reporters may be seen as misguided zeal or an unwillingness to cooperate. In dealing with reporters, be firm but not curt nor nonchalant, even when the reporters are persistent. Remember, reporters often give valuable help in the investigation of major crimes. Press passes should be disregarded when you are protecting a crime scene.

If the search is to be lengthy, set aside an area, close by but outside the critical area, to use as a collection point for trash generated in the search. Equipment not in immediate use should be placed in this area. MP and other official personnel may also use the area to take breaks. Using such an area reduces the chance of contaminating the scene.

By the end of the initial survey of the scene, you will have noted the obvious items of evidence to be collected. Decide on what order you will process and collect them. If the scene is very large or if more than one person will be searching, you must decide what should be searched for and how the tasks and the area are to be divided. If your search must extend beyond the immediate crime scene, people needed to make the search may be secured from an MP or other unit.

Searchers must be briefed thoroughly. Give them a full description of the evidence being sought. Tell them how the evidence may have been hidden or discarded. Tell them what to do when they find a piece of evidence. Tell them, emphatically, that when they find an item thought to be the one being sought or one like it, they must take three actions. First, they must refrain from touching or moving the item. Second, they must immediately tell the person in charge of the search. And third, they must protect the area until an investigator arrives.

A competent search of a crime scene demands close attention to detail. Items and materials that may seem unimportant at first may later prove to be

critical to the case. For this reason, you must begin the search of a crime scene with determination and alertness.

A successful crime scene search produces a comprehensive and nondestructive accumulation of all available physical evidence within a reasonable period of time. It should minimize movement and avoid unneeded disturbance. You can search a scene using one or more of four methods: the circle search, the strip search, the grid search, and the zone, or sector, search. Your choice of method is determined by the intent of the search and by the area to be covered. In rooms, buildings, and small outdoor areas, a systematic circle search is often used. In large outdoor areas a strip search, followed by a grid search, is more useful. After mentally dividing the area into strips about 4 feet wide, the searcher begins at one corner of the main area and moves back and forth from one side to the other, each trip being made within one strip. The grid search covers an area in the same way, but the searcher moves from end to end. Both indoor and outdoor areas may be searched using the zone or sector method.

Figure 2-1 gives you a visual representation of the various methods of search. The types of search patterns include--

- Circle search.
- Strip search.
- Grid search.
- Zone or sector search.

## RECORDING THE CRIME SCENE

Notes are your personal, and most readily available, record of the crime scene and of your investigative process. No rule exists concerning the detail the notes should reflect. Your objective should always be to make notes that will be fully meaningful months after the event. Remember that a note that is clear to you a short time after it is written may be unintelligible later. Do not expect to rely on your memory of associated events to give single word notes their full meaning.

Note taking should begin with your notification of the case and continue until the investigation is completed. Supplement your notes with photographs, and sketches. Record your notes in the order that you receive information, take actions, and make observations. The sequence of your notes should be logical and systematic.

Your notes aid in the accurate recall of events for testimony in court and they furnish raw material for your written report on the case. Your formal written report may not need the level of detail or items of information that are needed for your testimony. The details you record in your notes should anticipate both the needs of the written report and the questions you may be called on to answer for attorneys or members of a court.



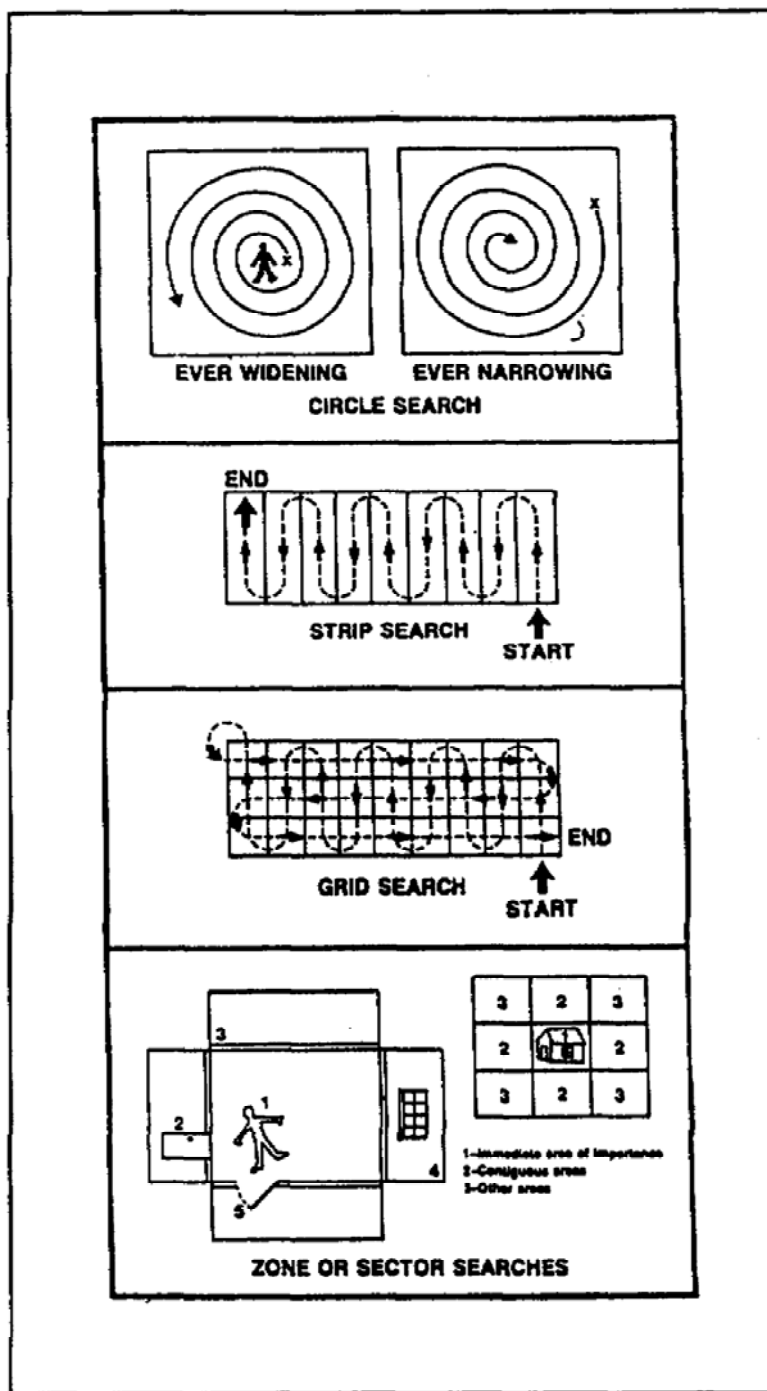


Figure 2-1. Types of Search.

The type of notebook you use, which may seem to be a minor point, can be important. Unless a separate notebook is to be used for each case, a looseleaf notebook is better than a bound notebook. Your notebook may be examined in court. If notes from several cases are included in the same book, there is a chance of unauthorized disclosure of information on matters not being dealt with in the case being heard. If a looseleaf notebook is used, the pages on other cases can be removed.. Unauthorized disclosure of facts relative to other cases is thereby avoided.

In major cases with a lot of physical material and a large crime scene, you may want to use a portable tape recorder. By taping your observations and findings, you can include more details in your notes. In all cases, the tapes should be transcribed into a written record that you may carry into court.

Keep your notes in a safe place with the local office case file. Even after a criminal has been convicted and sent to prison there is always a chance that an appeal or other civil action will require your appearance in court again.

Print your notes if your handwriting is not easy to read. Use blue or black ink that will not smudge easily. Number each page of notes and identify it with your name, your title or rank, the case number (when known), and the current date. Also record the times when an action is taken, when information is received, and when an event is observed. Do not edit or erase your notes. If you make a mistake, line out the entry, initial it, and then write the correct information.

Your notes should include a detailed description of the scene and any item you think pertinent to the case. Your description should be as complete as you can make it.

Record the exact location, giving measurements and triangulation of evidence, where the item was found. Cite the relative distances separating various items. State the techniques used to collect the evidence and to record identifying marks placed on the item or the package in which the evidence was placed. Be sure to tell what techniques were used to provide crime scene security and to search the scene. And include any actions you take that may have a bearing on the evidence you obtain or significantly affect the investigation.

## PHOTOGRAPHS

A picture may or may not be worth a thousand words. But it is certain that photography is a valuable aid in criminal investigations. Useful photographs can be made without great expertise.

Crime scene and evidence photographs are simply the photographs made to supplement notes and sketches or to clarify a point relative to a case. They are also made to identify personnel and to form a permanent record of fragile or perishable evidence. Time is an essential factor. Objects cannot be moved or examined with thoroughness until they have been photographed from all necessary angles. There are situations in which the object of interest undergoes significant change with the passage of time. Thus, photographic equipment must be kept in a constant state of readiness.

Photographs are admissible in court if you can testify that they accurately depict the area observed. The accuracy of a photograph relates to the degree it represents the appearance of the subject matter as to form; tone; color, if applicable; and scale. A lens that will accurately record objects and areas in focus may not correctly portray distances between objects

nor show objects out of focal range in their proper perspective. In such situations your crime scene sketch and your notes will play strong supporting roles.

Providing a photograph's negative is usually enough proof to refute an allegation that a photograph has been altered. However, if enlarged photographs are made for presentation in court, a contact print without borders should also be made. Because scale, distances, and perspective are important in interpreting photographs taken at crime scenes, include a ruler or other scale measure in such a photograph when you can. As some courts may not allow even this minor modification to the scene, you also should take an identical photograph without the scale indicator.

A photograph to be high-quality evidence, must depict the scene, persons, and objects precisely as they were found. Photography is an exclusive action in the crime scene search. No people may be working within the scene at the time it is photographed. Any extraneous objects, like police and investigative equipment are excluded from the photos.

Record the technical data for each photograph in your notes. Each photograph must be precisely identified. This data becomes part of the permanent record of the case. A good way to do this is to create a photo log. Assign each photo a number. Tell what each photo depicts. Cite the time the photo was taken, the type of photo, and the distance to the focal point. Tell what camera was used and at what height it was held. Give the position of the camera or angle of the camera shot. Say what lens was used, if flash was used or film reloaded, and describe any photo overlays. In addition to recording identifying data in your notes, you must do so on a photograph sketch.

All camera positions and distances to the focus point must be recorded on the crime scene photograph sketch. You can do this by measuring from a point on the ground directly below the camera lens to an immovable object used as the focus point for the picture. In making crime scene photographs, it is best to keep the camera at about eye level. If an explosive was used at a crime scene and there is residue of the explosive present, do not use a flash attachment. Use a tripod or raise or lower the camera height to get the object to be photographed in proper focus. Take overlapping photographs of interior scenes intended to depict an area as a whole, moving in one direction around the room or area.

The most important element in investigative photography is maintaining perspective. Photographs must reproduce, with the same impression of relative position and size of visible objects, the scene as it would appear to someone standing in the photographer's shoes. Any significant distortion in the perspective will reduce, or destroy altogether, the photo's evidence value. The best way to maintain natural perspective is to aim the camera so a 90-degree angle is formed by opposing walls. If outdoors, use fixed objects like trees to maintain perspective.

The chain of custody of investigative photographs is maintained in the proper case file. When you send film by mail to a commercial processor, use

registered mail with a return receipt. Keep registered mail receipts and copies of work orders for film processing in the proper case file.

## PHOTOGRAPHING SCENES AND OBJECTS FOR EVIDENCE

The most important rule in crime scene photography is to photograph all evidence or possible evidence before anything is moved or touched. This rule includes general scenario shots and closeups of specific items of evidence.

Fingerprints that can be seen without the aid of dusting powder should be photographed closeup before dusting. There is always the danger of the print being damaged during the dusting process.

Photographs should be taken of impressions of which a cast will be made. Hold the camera directly above the ground and the flash close to the impression at an angle. Use flash at all times. Oblique light will reveal more details. Take the closeup with a ruler near the print, so the proper scale can be determined. Make at least four photographs of each impression. Take a picture from every side, using light from each different direction. This reduces the chance of details being missed in a photograph because of shadows cast by a light source from only one direction. Make sure the date, case number (if known), your name, exhibit number (if known), type of film used, and camera setting shows in the photo. It should be written on paper and placed next to the impression.

Photographs of tool marks must show the marks and enough of the surface on which the marks are located to identify them positively. Show the mark as it actually appears and in its overall relationship to other objects at the scene. Include an ordinary ruler, along with data identifying the location, situation, and case, in each picture to provide the lab examiner a scale of measurement.

When photographing burglary, housebreaking, and larceny scenes, you will want to pay particular attention to the interior and exterior of the building and to damaged areas. Note particularly any damage around the points of entry and exit used by the criminal. Take closeups of damaged containers like safes, wall lockers, or jewel boxes that were the target of the offense. Take both closeup and perspective photos of tool marks. The latter will allow you to note the position of marks with respect to the general scene. And fingerprints and footprints, of particular value in these cases, should be photographed before they are lifted or preserved.

When photographing an arson scene, complete coverage of the damage is important. Perhaps of even greater importance are photos of objects or areas suspected to have been the point where the fire began. Make closeup photographs of all such objects or areas.

If the fire is in progress, seek out various angles from which to take photographs. But try to keep out of smoke-filled areas. Your first photographs should be of the entire structure. Use color film to show the color of the smoke, flames, and vapors. Take a series of photographs at

intervals of several minutes to show the intensity and direction of the fire. Then photograph any spectators. The perpetrator may be present, watching the results of his or her efforts.

When the fire is extinguished, photograph the entire exterior of the structure. Then photograph all affected interior areas and any evidence found. Photograph in detail suspected points of the fire's origin and areas showing an "alligator" burn pattern. You cannot rely on your exposure meter when trying to photograph charred wood. Instead, use a two- or three-stop overexposure.

Accident scenes should be photographed as soon as possible after the event. Except when photographing vehicles, set your lenses at normal focal length. This will prevent distortion in the relative width of roads, distances between points, and the like. If special lenses are used, note that fact in your record of the search and give a description of the lenses used.

Photograph the overall scene of the accident from both approaches to the point of impact. Capture the exact positions of vehicles, injured and deceased persons, and objects directly connected to the accident. If possible, take photographs of skid marks before the vehicle is moved. Then take photos of the marks after the vehicle is moved. Photograph all points of impact, all marks of impact, and all damage to real property. Be sure you record any pavement obstructions and defects in the roadways. Make closeup photographs of damage to each vehicle. Make at least two for each vehicle. The first should show the front and one side. The second closeup should show the rear and other side of the same vehicle. And, of course, you will want photos of tire tracks, glass, and other associated debris.

Usually, death scene photography must be more extensive than that of other crime scenes. This is due to the severity of the offense. Photograph the approaches to the scene and its surrounding areas (the yard of a building in which a death occurs, general area surrounding an outdoor crime scene). Take closeup photographs of the entrance and exit to the scene or of the route most likely to have been used if the entrance and exit are not obvious.

Make general scenario shots showing the location of the body and its position in relation to the room or area in which it was found. And give 360-degree coverage of the room or scene with overlap points clearly identified in the photographs. All evidence must be photographed--shots establishing the evidence in relation to the scene, shots of evidence closeup, and shots of evidence closeup with a ruler to show perspective and size. After the body is moved and each item of evidence is removed, photograph the area underneath them if there is any mark, stain, additional evidence, or other apparent change. Photograph any contaminated prints before you try to collect them. Photograph developed latent prints prior to lifting. Include shots of areas where prints are discovered if the areas were not included in other photographs. Photograph bloodstains, including their locations, with color film if you can. Black and white pictures should also be taken.

## PHOTOGRAPHING HUMANS FOR EVIDENCE

Photographs should be taken of victims or suspects of crimes like assault, aggravated assault, or sex offenses that involve bodily harm. Photographs should be taken of any wound, injuries, stains, or other trace evidence that may be on the person or the person's clothing. Written permission should be obtained from living persons before photographing them. If photographs of a body area that is normally clothed are required, a witness should be present. If the victim or the suspect is a minor, the written consent of the parent or guardian is needed. The photography must be done with the consenting person present.

Photographs of parts of the body that usually are not visible when a person is clothed are taken only under the direct supervision of the examining physician. It is the physician's testimony that the photographs are intended to illustrate. Thus, it is unusual for this type of photograph to be taken at the crime scene.

The evidence value of a photograph of a deceased person is reduced if you include views that could later be alleged to be deliberately inflammatory. The unneeded exposure of sexual organs is a case in point.

Take at least two, full-length photographs of the body at 90-degree angles to each other. Hold the camera as high as possible, pointing downward toward the body. Include at least one closeup photograph of the head and shoulders of the victim. Position the camera for this shot directly above the head and shoulders of the body. Take as many closeups of the body as needed to show wounds and injuries. When photographing a body that is lying in a horizontal position, hold the camera directly over the victim's head and shoulders. Do this at a height of no less than 5 feet. Closeup photographs of injured parts of the body are most effective in color, but black and white pictures should also be taken.

The presence of wounds, blood, or other discolorations on the corpse may affect identification. Using a lens filter to create more lifelike tones may aid identification.

Photographs of the body during the autopsy should also be taken. Cooperate with the pathologist to obtain these. Your photos should include full-length views before and after undressing and/or washing. Photograph identifying marks and closeups of all wounds with and without a measuring device. Both color and black and white photos should be taken.

## SKETCHES

Properly prepared sketches may be used to question people, to prepare a report of investigation, and to present information in court. Sketches also are valuable sources of information for trial and defense counsels. Sketches are often introduced in court as evidence. They are used to acquaint the court with crime scenes and to help witnesses orient themselves as they testify.

Sketches complement notes and photographs made during a crime scene search. A sketch communicates information the way a photo does, but has the advantage of being able to have unneeded and distracting detail left out. Sketches concentrate attention on the most essential elements of the crime scene and their relationships. There are two kinds of crime-scene sketches: rough and finished. A rough sketch is the kind you draw while at the crime scene. The purpose of a rough sketch is to portray information accurately, not necessarily artistically. You do not need to be artistic to draw a good rough sketch. A rough sketch is usually not drawn to scale. But it must show accurate distances, dimensions, and relative proportions. In order to eliminate excessive detail in a sketch, you may have to draw more than one. For example, one sketch may be devoted to the position of the victim's body and one or two of the more critical evidence items. Other sketches might show the location of evidence items with respect to the point of entry or to other critical points. Do not make changes in your sketches after you leave the scene.

A finished sketch is a draw to scale version of a rough sketch, from the information on the rough sketch. A finished sketch does not need to be drawn by the same person who drew the rough sketch, however, he must verify the accuracy of the finished sketch. It is best if the finished sketch is drawn by an experienced draftsman, normally provided by the engineers office. The name of the person who drew the smooth sketch is shown in the investigator's notes and on the sketch. A copy of the finished sketch is attached to each copy of the investigation report. By making a scaled drawing, the numbers showing the distances can be omitted from the sketch.

## MAKING A ROUGH SKETCH

Any kind of paper may be used for a rough sketch. However, bond or graph paper is best. It can be placed on a clipboard large enough to form a smooth area for drawing. To prepare a rough sketch you need:

- o A soft lead pencil.
- o A 100-foot steel tape.
- o A straightedge ruler.
- o Several thumbtacks to hold one end of the steel tape down when you are working alone.
- o A magnetic compass.

You may add as many items to this list of basics as you like.

Several items of information are considered essential in a crime scene sketch. But do not restrict your sketch to these items alone. The major constraint on detail in sketching is that the result must be completely intelligible to a viewer without a detailed study. If you include too much detail, the major advantage of a sketch over a photograph is lost.

Each sketch should include the critical features of the crime scene and the major, discernible items of physical evidence. Evidence sketches must show accurate measurements of the crime scene. They show the location of evidence established by use of the triangulation method. A photo sketch must show camera positions and distances to focus points.

Each sketch should have a caption to identify the illustration. For instance, a caption might read: "Rough sketch showing camera positions and distances." Each sketch must have a legend. The legend explains the symbols, numbers, and letters used to identify objects on the sketch. Use standard military symbols where practical. Your sketch must also show the compass direction north. You will need to include a scale designation for scaled drawings only. If no scale is used, write "not drawn to scale." And each sketch must have a sketch title block containing the following entries:

- o Incident report number: MP Report, USACIDC sequence number, or Report of Investigation (ROI) number.
- o Alleged offense.
- o Name and rank or title of the victim.
- o Scene portrayed--citing room number, building number, and type of building, (PX, commissary, house, troop billets).
- o Location--citing complete name of installation, city, state, and zip code.
- o Time and date sketch was started.
- o Name and rank or title of person who drew the sketch.
- o Name and rank or title of person who verified the sketch.

Measurements shown on the sketch must be as accurate as possible. Steel tapes are the best means of taking accurate measurements. A measurement error on a sketch can introduce doubt as to the competence of an entire crime scene search.

Measurements should be made and recorded uniformly. If one aspect of a sketch is accurate, such as the dimensions of a field in which a body was found, and the position of an object within the field is only roughly estimated, the distortion thus introduced renders the sketch relatively useless. It is important that the coordinate distances of an item in the sketch be measured in the same manner. For example, one coordinate leg of the victim should not be paced and the other measured with a tape measure. It is also a mistake to pace off a distance and then show it on the sketch in terms of feet and inches. This implies a far greater degree of accuracy than the measurement technique could possibly produce. If the point arose in court, such imprecision could greatly detract from the value of the sketch.



## LOCATING EVIDENCE ON SKETCHES

Various sketch methods may be used to locate evidence and other important items at the scene. The simplest form of a sketch is a two-dimensional presentation of a scene as viewed directly from above. Evidence is located on this type of sketch by triangulation. Triangulation is used for indoor and outdoor sketches having fixed reference points. Objects are located by creating a triangle of measurements from a single, specific, identifiable point on an object to two fixed points, all on the same plane, at the scene. If movable items are to be used as reference points, they must first be “fixed” themselves. Do not triangulate evidence to evidence. Do not triangulate under or through evidence. Do not take a line of measurement through space. Measure your line along a solid surface like a floor, wall, or table top. In the interest of clarity, keep the angle of triangulation measurements between 45 and 90 degrees on the sketches.

Regular shape items are fixed by creating two separate triangles of measurements. Each originates at opposite points on the object and ends at two fixed points, on the same plane, at the scene. This is commonly known as the 2-V method of triangulation.

Pliable objects are fixed by creating a single triangle of measurements from the center of mass of the object to two fixed points, on the same plane, at the scene. You also measure the longest and widest dimensions of the object.

Inhabited outdoor areas usually have easily defined, fixed reference points, such as buildings, edges of roads, and sidewalks. When these are present, the triangulation method can be used to establish the location of objects. But uninhabited or remote areas may not have easily defined, fixed points within close range. In such cases, objects will have to be located by using the intersection-resection method taught in map reading.

Cross-projection is used to add another dimension to sketches. The added dimension is useful when items or locations of interest are on or in wall surfaces in an enclosed space. The walls, windows, and doors in a cross-projection sketch are drawn as though the walls had been folded out flat on the floor. The required measurements and triangulation of evidence are then entered on the sketch. A cross-projection drawing may be used as a scaled drawing.

Figure 2-2 depicts an example of a rough sketch of an interior crime scene showing evidence measurements and triangulation. See Figure 2-2.

Figure 2-3 depicts an example of a rough sketch of an outdoor crime scene showing evidence measurements and triangulation. See Figure 2-3.

Figure 2-4 depicts an example of a finished sketch drawn to scale of an indoor crime scene. See Figure 2-4.

Figure 2-5 depicts an example of a cross projection sketch, which is drawn to scale. See Figure 2-5.

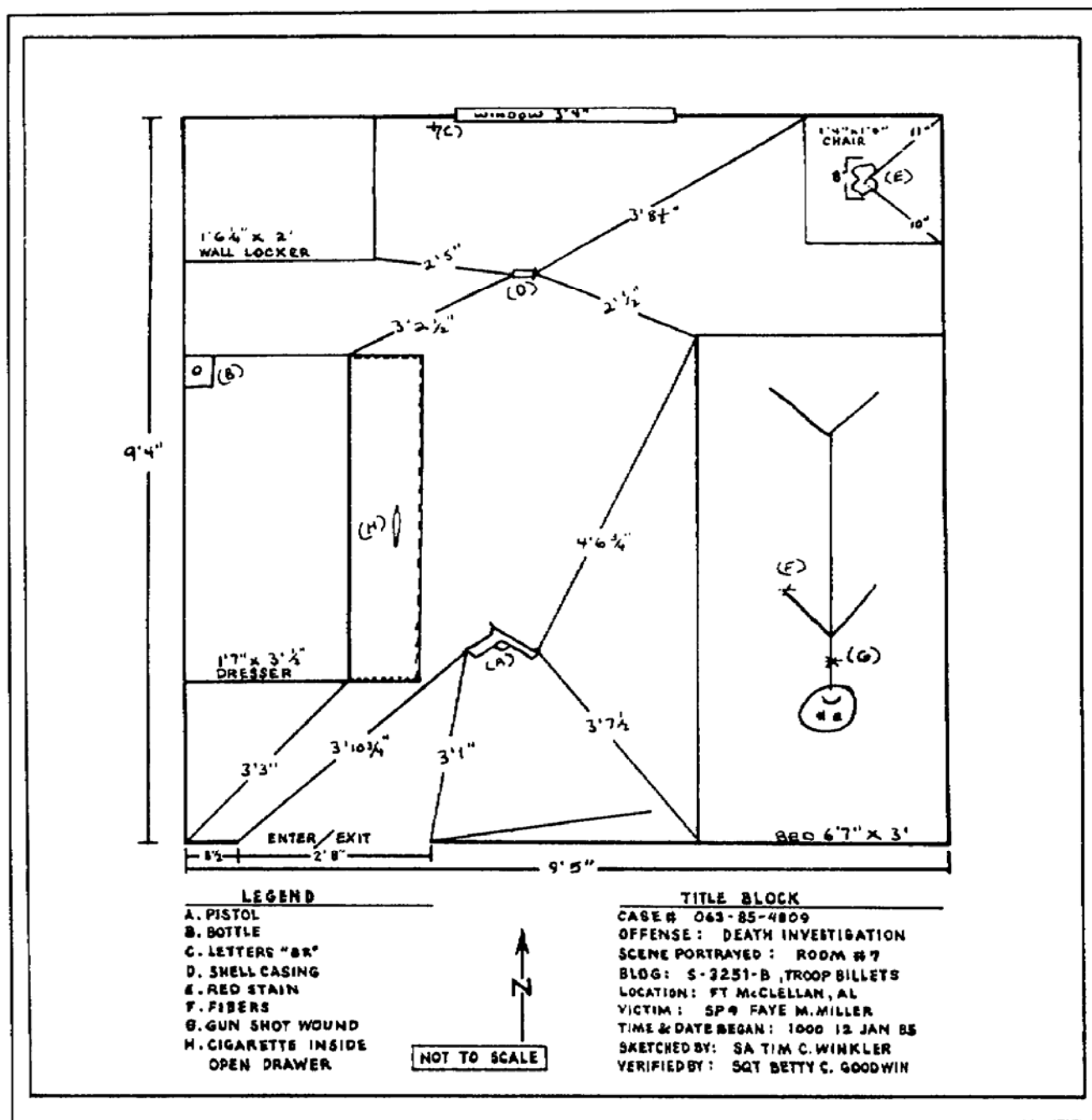


Figure 2-2. Rough Sketch Showing Evidence Measurements and Triangulation of an Interior Scene.

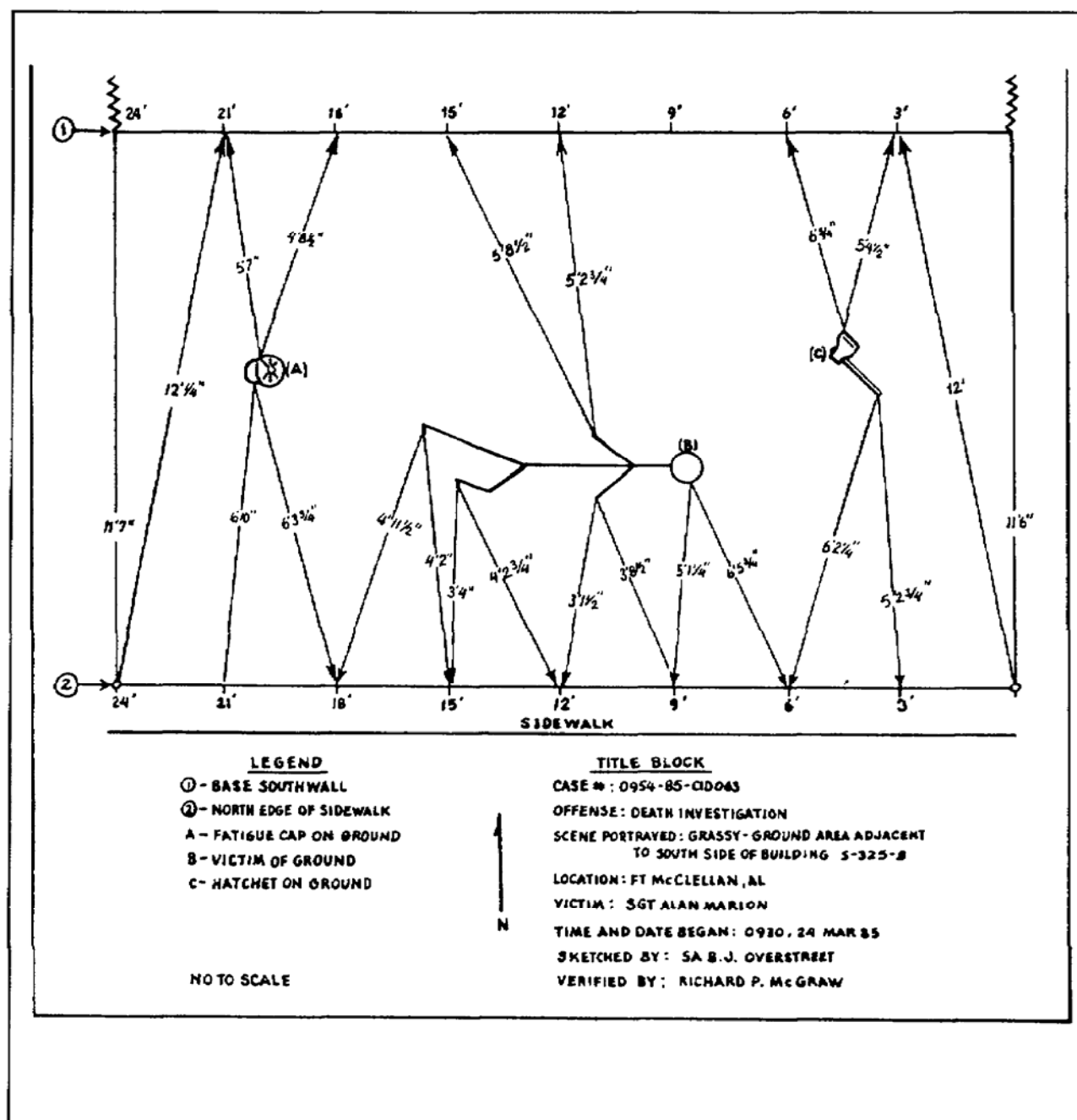


Figure 2-3. Rough Sketch Showing Evidence Measurements and Triangulation of an Outdoor Scene.

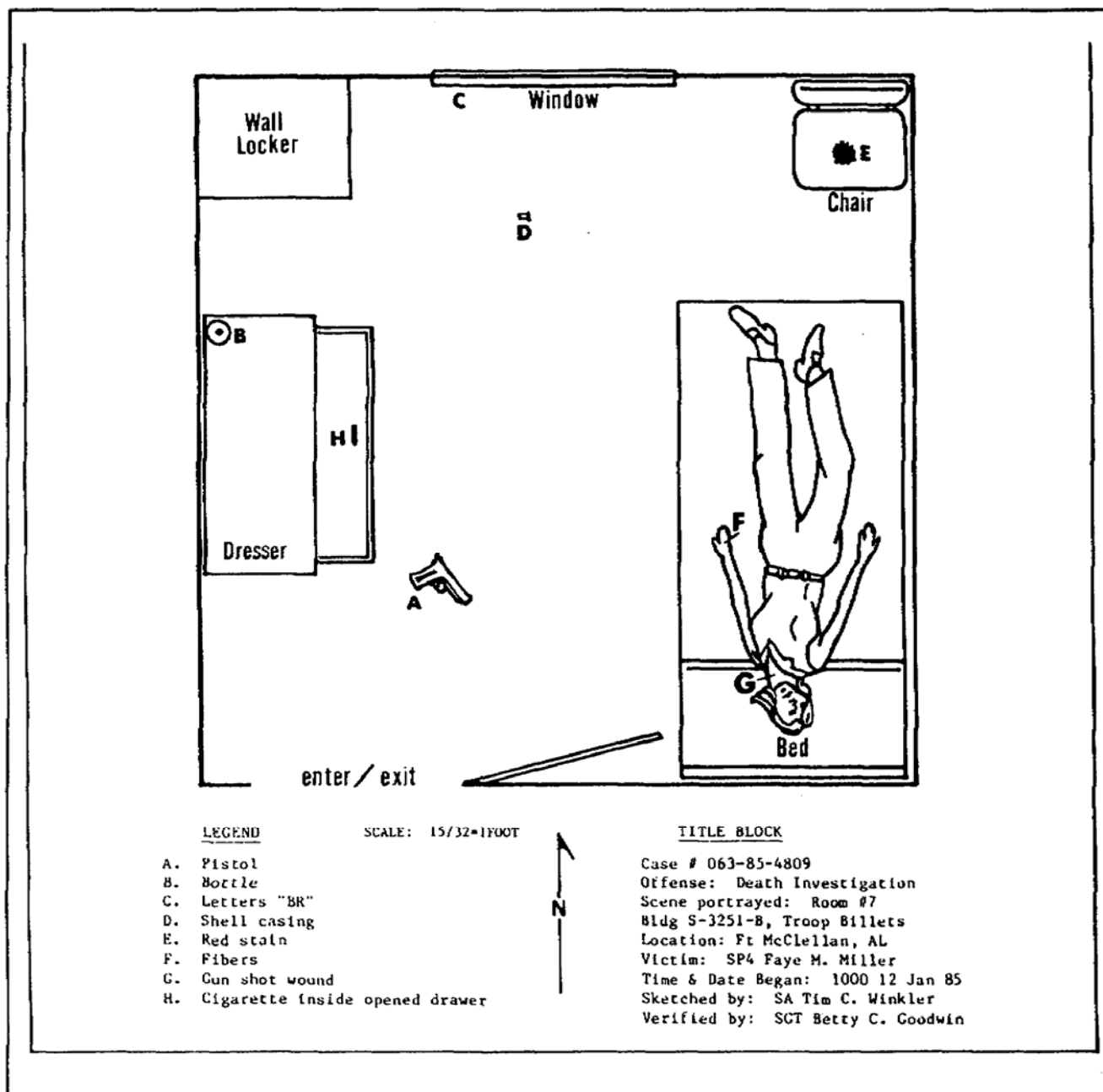


Figure 2-4. Finished Sketch Drawn to Scale.

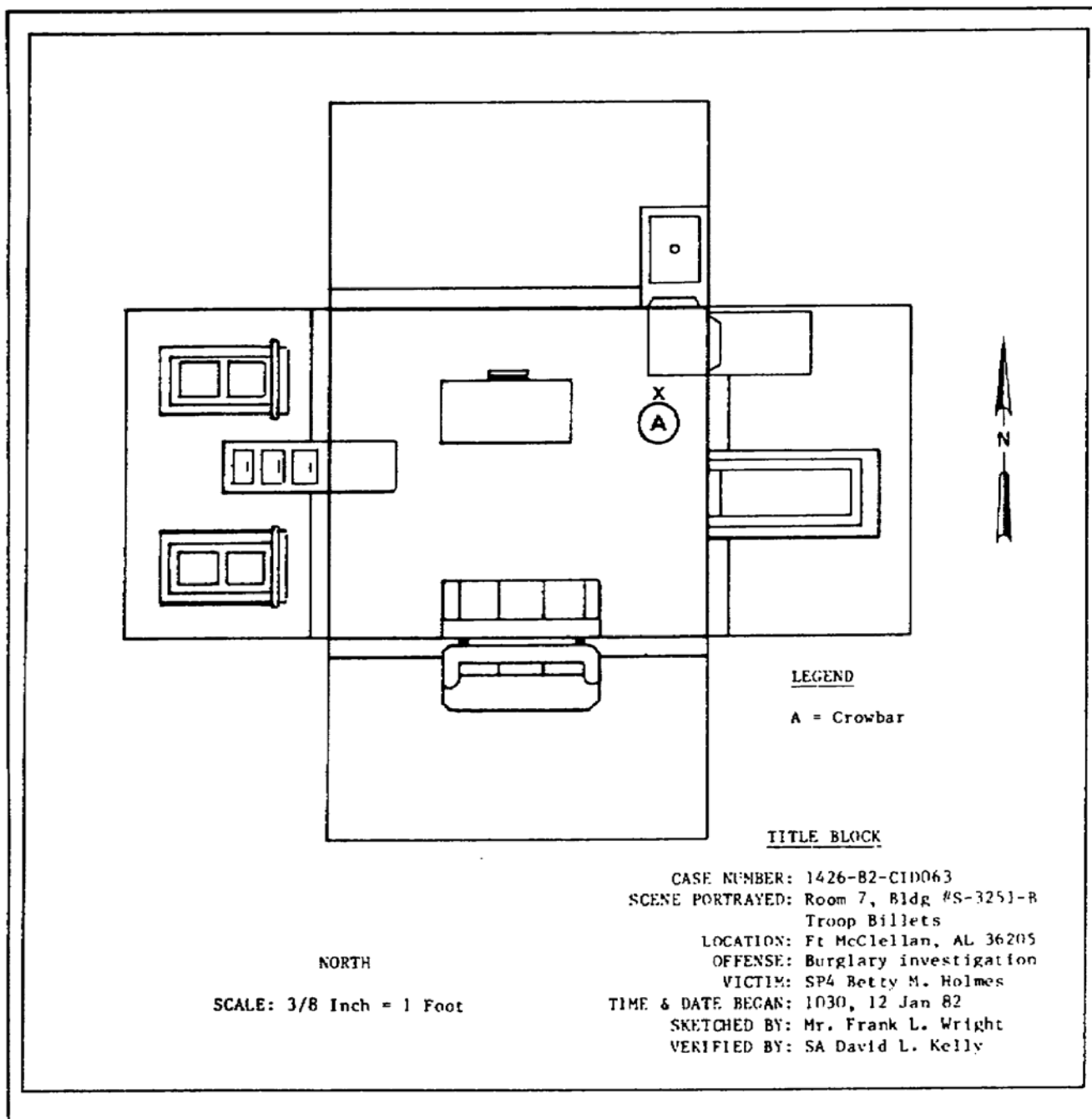


Figure 2-5. Cross Projection Sketch drawn to Scale.

## PART B - EVIDENCE COLLECTION

Although the circumstances of a case must always guide your actions in processing a crime scene, experience has shown that the following general rules are useful in systematizing the search for, and the collection of, evidence and in preventing errors.

- o Give first priority to fragile evidence that can be altered by time or the elements. Collecting evidence at a crime scene is usually done after the search has been completed, the photographs have been taken, and the rough sketches have been drawn. But under certain conditions it may be best to collect fragile items of evidence as they are found. Some forms of evidence can be destroyed by the elements or be contaminated, despite protective measures.
- o Next, collect items that could impede the search of the scene--but only after they have been located, noted, photographed, and depicted on the sketch. The essential factor is that the evidence be carefully and properly collected.
- o Place your initials and the date and time of collection on each piece of evidence so you can identify it at a later date. Do this as you collect the evidence. Place the information where it is least likely to affect the appearance, monetary value, use, and evidence value of the item. Evidence that cannot be marked must be placed in a proper, clean container; sealed; and identified by marks on the container. Make notes, to include a description, in your notebook at the time the evidence is marked.
- o Examine, photograph, sketch, record, and collect major evidence in the order that is most logical, considering the need to conserve movement. Do not move any item until it has been examined for trace evidence. Make casts and lift latent prints from items that must be moved. Or at least develop, photograph, and cover prints with tape before an item is moved.
- o You may have to damage, partially destroy, or otherwise decrease the effectiveness of an article to collect important evidence. Such actions are based on the needs of the individual case. You may have to cut the upholstery on a piece of furniture to get an area stained with blood. You might need to cut out a section of a wall to collect fingerprints or other evidence that cannot be collected by other means. A door or a window may need to be removed from a building to process it at a lab or to hold it as evidence. When a door or a window is removed or when a building or a room is made insecure by evidence collection actions, make sure that measures are taken to protect the interior's contents.
- o When death is involved, process the evidence between the point of entry to the scene and the body. Next, make a detailed search of the deceased. After the search, remove the body. Then continue processing evidence.

- o After processing the major, obvious evidence, search for and collect trace evidence. After the trace evidence has been processed, the scene should be dusted for latent prints. If latent prints are found, they should be photographed and collected. After the latent prints are lifted, explore the scene for trace evidence that was not observed during the visual search. Pieces of evidence found during the exploratory search should be noted, photographed, sketched, and collected. When sweeping or vacuuming, surface areas should be segmented. Package the sweepings from each area separately. Record the location of their point of recovery.
- o Make elimination prints of investigators and all other persons who may have had access to the crime scene. Elimination prints allow the lab to eliminate the prints of all persons who had legal access to the scene. Usually, elimination fingerprints and physical evidence standards are collected after you complete the above actions.
- o When collecting evidence at the crime scene for lab analysis, the amounts needed will depend on the nature of the evidence and the tests to be conducted. For proper evaluation of stains by lab technicians, submit control samples in addition to the collected stains. For example, a stain on soil or porous surfaces is collected by dipping or gouging beneath the stain. Also, unstained portions are collected and identified as control samples. Preserve the integrity of control samples as carefully as you do the integrity of evidence.

As you begin your efforts to process evidence, remember that the evidence value of materials of the scene is not always easy to tell in the early stages of an investigation. If you have any doubt about whether or not to collect and preserve an item that only might be evidence, do so. Collect and preserve glass fragments, for example, even if you are unsure they will be useful. If you do not, the broken glass is likely to be discarded as trash.

Use care with doors, windows, and other openings with hinged or sliding doors or covers. They must not be opened, closed, or handled in any way that would destroy or mar minute tool marks or fingerprints. In handling a firearm, take care not to cause the loss of possible latent prints unless certain they will not be material to the case. In most cases, weapons may be picked up by the grips. The checkering precludes getting usable prints from this area. Or you may use a piece of wire or like material placed through the trigger guard or lanyard ring. Do not use a handkerchief or like material or insert any object into the bore to pick up the weapon.

It is logical to start the search of a crime scene for fingerprint evidence at the point of entry. Check all possible points of entry to see if futile tries may have been made there. A strong oblique light is a great aid in finding latent fingerprints.

Check walls. When a person picks up a heavy object close to a wall, he may place his hand on the wall as a brace. Look on counter tops and other flat surfaces where persons may lean, as well as looking on objects they may

move. And check the undersides of heavy objects like tables, chairs, and other furniture. It is natural for finger contact to take place when lifting or moving them.

When a latent print is found, the first - always the first - thing to do is to photograph it. Only after a print has been photographed should you try other means to preserve the print. Always include a ruler in photographs of fingerprint evidence. Photographic techniques such as using reflected light at various angles, filters, and different types of film may be needed to make a photograph of value. And back-lighting through a pane of glass has been successful with even the faintest of latent prints.

Note exactly where, when, by whom, and on what objects latent prints are found. Mark even partial prints for orientation if you can. From a print's location you may be able to tell which hand made the fingerprint. If you find two or three prints, it is often possible to tell which fingers made them.

When searching indoors for footprints, first darken the room. Then use a flashlight to search floors, window sills, and furniture. Oblique lighting often makes it possible to see prints that cannot be seen with ordinary or direct light. Footprints on carpets can be photographed. Good results have been gotten by using a high contrast film and a high contrast paper for the print. Prints made by dirt sticking to shoes can be lifted by using large sheets of fingerprint lifting tape, gelatin print lifters, or the electrostatic dust print lifter.

If a firearm was discharged, pellets or bullets may be lodged in ceilings, walls, furniture or flooring. When taking a bullet from its resting place, you must use care not to mutilate any identifiable features. Record exact details as to location and condition of the bullet, type material it pierced, and depth of penetration. Note irregularities of size and shape, and approximate angle of impact. Also note any other information which may help the laboratory examiner. Note in your crime scene sketch the point at which each discharged bullet or fired cartridge case was found.

Tool marks are preserved even if no tools are found at the crime scene. The tools that made the marks may be found later. Check every door, window, and other opening that may have been used as a means of entry or exit. Tool marks are likely to be discovered at these points, especially if forcible entry or exit has been made. Pay close attention to broken, forced, or cut locks, latches, and bolts, and the area around them. Also examine safes, cabinets, desks, chairs, tables, or ladders for marks. Search the entire scene and beyond for the tool that may have been used.

The hardest evidence to locate at the crime scene is hairs and fibers. The search must be thorough, detailed, and exacting. Obvious locations to search include headgear and clothing. Pay special attention to linings, pockets, and cuffs. Another place to search is the victim's body, especially in sex crimes. Check underneath the fingernails. Also check any upholstered surface at the crime scene.



Soils, rocks, and other minerals may be found on a suspect's body, shoes, clothing, or vehicle. They may be found on tools used in a crime, on a victim, or elsewhere at the crime scene.

Keep these and other sources of trace evidence in mind. Be diligent in your search for them at the scene, on the suspect, or on equipment he has used. Note stains, spots, and pools of liquid within the scene and treat them as evidence. Fluid samples may be collected with a clean medicine dropper and refrigerated.

Your collecting of evidence from an injured victim at a crime scene will be very limited. Usually, you only make a quick observation of the victim's dress, general condition, and the nature of the victim's wounds or injuries. In some cases even this much cannot be done before seeking medical care.

The investigator who goes to the hospital to interview the victim should collect, or make arrangements to collect, items of physical evidence and certain evidence standards that may be needed in the case. For example, when it is apparent there was physical contact between a suspect and a victim, the victim's clothing should be recovered. Wrap each item separately and mark it.

If a victim reports having slapped at or clutched a suspect, fingernail scrapings should be collected. If a victim's injuries result in bleeding, get a sample of the victim's blood for typing by the crime lab. Get a sample even if the pathologist will run extensive blood tests. If blood is involved, the crime lab will want to run its own tests.

The nature and the exact location of any of a victim's wounds or injuries should be learned from the examining physician. Make arrangements to photograph bruises suffered by the victim. Photographs of bruises should be taken as soon as possible, because bruised areas tend to change appearance rapidly. Photographs should also be taken at 24 hours, 48 hours, and 72 hours after the incident to show changes in coloration of the bruised area. Changes in coloration aid in determining time and date of the injury.

In the case of a deceased victim, your search for evidence at the scene will be detailed. Before a body is moved -- even slightly -- its position and everything concerning its discovery must be photographed and recorded in detail. First photograph the body to show its position in relation to the scene. Note the position of the limbs in reference to the body. Then, take close-up photos to show details of wounds or injuries and of the positions of apparent evidence items with respect to the body. Then take measurements and draw your sketches. After these details have been recorded, a thorough search of the body may begin.

Examine the body for minute items of evidence like hair and fibers, paint, or glass chips. Your most important action is to ensure that the position of the evidence on the body is recorded precisely. The quality of trace evidence is often determined as much by where it was found as by what it is. Thus, glass slivers found in the seam of the left shoe should be recorded in such a way that all details are shown.

To be thorough, start the search at the top of the head. Proceed down one side of the body to the foot and the soles of the shoe. Next, repeat the process on the other side. Try to spot hairs clinging to the clothing or attached to the fingernails. To see hair or fibers you may need to view the silhouette of the body against a light.

It is rarely wise to take elimination fingerprints of a dead victim at the crime scene. Nor should you scrape the corpse's fingernails in the field. Weather conditions and the likelihood that rigor mortis will have occurred pose too many problems. Such tasks are better done at the morgue. To protect the victim's hands from contamination, place clean paper bags over them and tie or fasten them securely at the wrist. Avoid using plastic bags. They cause condensation, which can destroy evidence.

After searching the body and removing it from the crime scene in a clean sheet (bedsheet), it should be placed in a clean, disposable body bag for shipment to the morgue. This makes sure physical evidence is not lost. It also prevents cross-contamination of the evidence on the body during shipment. After the body is removed, ensure that the area under the body is photographed and examined in detail immediately after the body is moved. An investigator should accompany the body to the morgue.

The search of the body is continued at the morgue. This is usually done by the pathologist doing the autopsy. Because the pathologist should have someone present who is aware of all the details of the crime and the crime scene, you also should be present. You should stay during the autopsy. The pathologist or medical examiner is in charge of the body and related evidence until the examinations are done, and the body is released for further disposition. Therefore, you must key your own examinations and actions to the pathologist's or medical examiner's policies until the body is released.

Make notes of the cause of death, depth and general nature of the wounds, and other contributing factors as described by the doctor. Also note the pathologist's estimate of the time of death. Arrange to get a copy of the death certificate and autopsy report.

Before a deceased victim is undressed, the clothing and hands should again be examined for trace materials. Because the lighting is usually better at the morgue, quite often material that was missed in the field will be found during this search. When the body is undressed, try to see that garments are not cut for removal if this is at all possible. If a cut must be made, bloody or stained areas and points of obvious damage must be left as they are. Entry and exit points of bullets or weapons must be preserved.

Garments should not be shaken out. If a garment is wet or bloodsoaked, it should be laid out flat to dry naturally in a ventilated space at room temperature. It may be wrapped in clean paper, as long as one wet area does not come in contact with any other surface of the garment. Wrap each item of clothing separately. Never put damp garments in a plastic bag; rapid biological change will almost always result.

Once the victim is undressed, the body is again examined. All marks or wounds are recorded. Take close-up photographs of wounds and injuries. Include a ruler in the picture to show the scale. Head and pubic hair samples are collected if the nature of the case requires. Place these in a clean piece of tissue paper, fold carefully, and seal in a clean envelope, marked with all needed data.

If rape is suspected, vaginal smears should be obtained by the pathologist to be sent to the crime lab. The swabs used for the smears should also be sent to the lab. If possible, use the standard investigator's rape kit. Comply with the instructions contained in the kit.

Inked elimination finger and palm prints of the deceased victim are also taken at the morgue. If the hands are to be swabbed for firearm residue, do this before the victim is fingerprinted. If the body was found without shoes, make inked prints of the feet.

Any slugs or other objects recovered during the autopsy will be marked by the pathologist and released to you for packaging and shipment to the crime lab.

When you collect evidence from a suspect, take custody, as soon as possible, of the clothing the suspect was wearing when he or she was arrested.

If much time has passed since the crime took place, taking custody of the shoes may be all that is needed. If the suspect's clothing at the time of arrest is thought to be the same as that worn when the crime took place, send all of it to the lab for examination. Handle each clothing item, including shoes, with care and wrap it separately.

After collecting a suspect's clothing, collect other evidence for forwarding to the crime lab. These include samples of the suspect's blood and hair, fingernail scrapings, firearm residue, and a full set of fingerprints and palm prints. If prints or impressions of bare feet were found at the crime scene, take a set of inked footprints from the suspect.

When collecting evidence from an outdoor crime scene, give attention to the route searchers will take to the focal point of the crime. Almost all the evidence that will be recovered will be found on the ground. Thus, it can be easily overlooked or walked on. The searchers' approach should follow a route that seems least likely to have been used by the criminal.

The nature of an outdoor site influences the types of materials that you collect. For example, because there are far fewer smooth surfaces in outdoor crime scenes, fingerprints are found less often than in indoor scenes. This does not, however, preclude discovering prints on man-made objects like weapons, cans, bottles, or other items. And locations where evidence is found in outdoor crime scenes is often harder to record, because there are fewer reference points outdoors.

Carefully examine the vegetation in the area for damage. It may be possible to tell the path taken by the suspect. And it will also help you reconstruct the events leading up to the crime. Tree limbs or woody vines with tool marks should be carefully noted and collected.

Broken limbs or twigs around or leading to the focal point of the crime should be checked closely for fibers or fragments of clothing. Look for paint chips and other trace evidence items that may have been deposited by the passage of the suspect or his vehicle. Examine the area around the base of any tree or bush that appears to have been altered by the passage of an object. If blood or semen is suspected to be mixed with soil, samples of the soil should be collected, processed, packaged, and marked.

Make careful search for tire and shoe impressions. Those found should be photographed and processed. If you can tell the position on the vehicle or the tire that made the impression, put that fact in your notes. Collect soil samples from the immediate area of foot or tire impressions. Place each sample in a separate clean container. Record each sample's exact location and the date and time of collection in your notes. Mark the same information on the container and add your initials.

In outdoor death cases, the area directly under the body should be given the most attention. It is here that important physical evidence is most likely found. Although the wind may blow away pieces of trace evidence originally on or around the body, evidence that is under the body will usually be trapped and protected from the weather. But be sure to search the area close to the body for materials that could have been transferred to the suspect during the commission of the crime. Collect samples of the soil and other remaining materials to be sent to the crime lab to be examined in detail. The vegetation itself is of little importance, but the microscopic materials that it may carry could be valuable evidence.

## **PRESERVING THE EVIDENCE**

It is your responsibility to make sure that every precaution is taken to preserve evidence in its original state until its final disposition. The main scientific requirement for handling and preserving evidence is that the evidence be protected from change. Organic materials will always undergo some change. Inorganic materials may undergo change from the weather or other unavoidable actions. You should take every precaution to prevent or to minimize change. Handle the evidence as little as possible. Rubber gloves may be used. Use only clean containers to store and ship evidence. Clean containers reduce the chance for chemical and bacterial contamination of a sample. Use containers that prevent spillage, evaporation, and seepage. Take care not to accidentally scratch, bend, or unnecessarily touch evidence. Watch for cross-exchange, such as placing a suspect tool that will be examined for paint in contact with painted surfaces at the crime scene.

If you touch a piece of evidence and leave your fingerprints on it, show this fact in your notes. Also, if lab personnel are to examine the evidence, be

sure to inform them that your fingerprints are on it. Submit a set of your fingerprints for elimination.

Preservation of evidence includes preserving the security of the evidence. It also includes preserving its chain of custody. Each person in the chain is responsible for the care, safekeeping, and preservation of the evidence under his control. Persons in a chain of custody are identified on the DA Form 4137 (Evidence/Property Custody Document), which is initiated when the evidence is acquired. This form, known as the custody document, is a multipurpose form. It is a receipt for acquiring evidence. It is a record of the chain of custody of evidence and authority for final disposition. And it cites the final disposition and/or witnessing of destruction of the evidence.

Evidence is stored in a key-type field safe or other high security container for temporary storage of evidence during other than normal duty hours. The evidence custodian is responsible for the evidence when you or other competent authority involved in the investigation, like a trial counsel, are not using it.

Evidence that you obtain must be tagged before it is submitted to the evidence custodian. Tagging should be done at the crime scene when the evidence is collected, at the place where it is received, or as soon as possible thereafter. Attach DA Form 4002 (Evidence/ Property Tag) or its equivalent to each piece of evidence to identify and control it. When pieces of evidence are grouped together, like tools in a tool box, and listed as one item on DA Form 4137, only one tag is used. When heat seal bags are used, affix a self-adhering DA Form 4002 to the bag.

#### RECOMMENDED METHODS FOR HANDLING SPECIFIC ITEMS OF EVIDENCE

ITEM	METHOD
Handguns	Use your fingers on knurled grips. Do not touch smooth grips or smooth metal parts. Use the tip of the grips. Do not touch the magazine base of pistols. Place in a box, bracing the weapon at front and rear.
Paper money, documents, paper	Use tweezers. Do not place tweezers over any obvious smudge. Place each item in a clean envelope or bag.
Broken glass	Use your fingers on the edges of larger pieces. Do not touch flat surfaces. Use tweezers on pieces too small for your fingers. Do not grasp over any obvious smudges. Wrap pieces individually in clean tissue, and place in a box, and stabilize to prevent rubbing, shifting, or breakage.

## RECOMMENDED METHODS FOR HANDLING SPECIFIC ITEMS OF EVIDENCE

ITEM	METHOD
Dried stains on smooth surfaces of furniture	Collect portion of furniture bearing surfaces of furniture stain in original pattern, if possible; otherwise, scrape with pocket knife or putty knife, removing as little of the finished surface as possible.
Bottles, jars, drinking glasses	Insert two or more fingers into large mouth vessels. Place the index fingers on the top and bottom of small mouth vessels. Do not contaminate or spill any substances in the vessel that may have evidence value.
Bullets	Use your fingers or use tweezers with taped ends. Avoid damage to rifling marks on the circumference. Place in a pillbox.
Cartridge cases	Pick up at the open end with tweezers. Avoid scratching. Place in a pillbox.
Dried stains on a floor	Collect portion of floor bearing stain in original pattern, if possible; otherwise, remove by gouging deeper than the stain with putty knife, wood chisel, or other necessary tool. Place in pillbox or larger similar container.

### PREPARING DA FORM 4137

You must record each item of evidence that you acquire on a DA Form 4137. Prepare an original and three copies. Entries should be typed or printed legibly in ink. When evidence is received from a person, give the last copy to him or her as a receipt. When evidence is found, rather than received from a person, give the last copy to the responsible officer at the scene. The original and the first two copies go to the evidence custodian. He keeps the original and first copy for his records. The second copy is returned to you for inclusion in the case file.

Complete the administrative section of the custody document, stating clearly how the evidence was obtained. In the Description of Articles section, describe each item of evidence, accurately and in detail. Cite the model, serial number, condition, and any unusual marks or scratches. Enter the quantity of an item that is hard to measure or subject to change, like glass fragments or crushed tablets, using terms like "Approximately 50," or "Undetermined," or "Unknown."

The Chain of Custody section provides information about the release and receipt of evidence. From initial acquisition of evidence to its final disposition, every change in custody must be recorded in this section. The

first entry under the Released By column is the signature, name, and grade or title of the person from whom the property was taken. If the person refuses or is unable to sign, enter his name on the form and write “Refused” or “Unable to sign” in the signature block. If the evidence was found at the scene or if the owner cannot be determined, write NA in the signature block.

Under Purpose of Change of Custody column write “Evidence.” Or, if you are also the evidence custodian, write “Received by Evidence Custodian.” If the evidence you are listing is nonfungible evidence sealed in a container, note this information in this block as “Sealed in a (state the type of container here).” And whenever custody of sealed fungible evidence changes, note in this column “Sealed container received, contents not inventoried.” This may be abbreviated as “SCRCNI.”

If and when any change of custody occurs, it is the responsibility of the person in control of the evidence at that time to ensure that entries of the change are made on the original DA Form 4137 and all appropriate copies. The importance of keeping accurate and complete custody documents cannot be overemphasized.

#### WRAPPING, PACKING, AND TRANSMITTING EVIDENCE TO THE LAB

When evidence is to be sent to the lab you must ensure its security and chain of custody are not violated. A package wrapped for shipment to the laboratory should contain evidence from only one investigation. Each item of evidence within the shipping container should be in its own separate package. Violation of this procedure can result in contamination of evidence and problems in the chain of custody.

Complete DA Form 3655 (Crime Lab Examination Request) in an original and two copies. Instructions for completing this form are outlined in Chapter 5 of AR 195-5. Keep one copy of the form in the investigative case file. The original and the other copy of the form will go with the evidence to the laboratory. Your photographs and sketches are often very useful to the lab examiners, particularly in violent crimes. Consider including copies of them when you send evidence to the laboratory.

Pack each item in a way that will minimize friction and prevent it from shifting, breaking, leaking, or contacting other evidence. Pack in cotton or soft paper, items that are particularly susceptible to being broken, marred, or damaged.

Wrap each item of evidence separately. Label each item to correspond with its entry on DA Form 3655 and pack it securely in a shipping box. Documentary evidence may be placed in an envelope. Seal the box or envelope containing the evidence with packaging tape. Place your initials or signature across the sealed flap of the envelope or across the paper tape used to seal the box. Cover your initials or signature with transparent tape.

Place the original and one copy of DA Form 3655 and the original of DA Form 4137, obtained from the evidence custodian, in an envelope. Seal it, and

address it to the laboratory with an attention line to the specific division (document, fingerprint, firearm). Tape this sealed envelope securely to the box or envelope containing the evidence. Then wrap the box in heavy paper or seal the envelope inside another envelope.

Label packages containing items of evidence that require careful or selective handling while in transit “Corrosive,” “Fragile,” “Keep Away From Fire,” or “Keep Cool,” as appropriate. And keep in mind that evidence needing refrigeration can be damaged or destroyed if left unattended in a post office over a weekend.

The way you transmit evidence to the crime labs depends on the type of evidence and the urgency of need for the results. Evidence may be hand carried to the lab or sent by first class, registered mail. It may also be transported by government carrier. Federal laws prohibit transmitting certain types of merchandise through postal channels. If there is any question on mailing, consult the nearest postmaster.

\* Requirements for the transmittal of biological fluids such as blood are found in 42 CFR (Codes of Federal Regulation) part 72.2. If there is any question on mailing and packaging of biological fluids, consult with personnel in the Evidence Processing Section at USACIL.

Chemicals, gases, unexploded bombs, detonators, fuses, blasting caps, and other explosive or flammable materials cannot be sent by mail. Transmittal of these items of evidence must conform to the provisions of AR 55-355, Interstate Commerce Commission regulations, and appropriate State and municipal ordinances. Before these items are forwarded, you must notify the laboratory that the shipment is planned and the lab must acknowledge receipt of notification. In your notification give details of how the materials are packed. This will reduce the danger involved in unpacking these items at the laboratory.

Figure 2-6 depicts an example of a completed DA Form 4002. See Figure 2-6.

Figure 2-7 depicts a completed DA Form 4137 (Front). See Figure 2-7.

Figure 2-8 depicts a completed DA Form 4137 (Back). See Figure 2-8.

Figure 2-9 depicts an example of how to properly wrap and package evidence to be sent to USACIL. See Figure 2-9.

Figure 2-10 depicts an example of a completed DA Form 3655 (Front). See Figure 2-10.

Figure 2-11 depicts an example of a completed DA Form 3655 (Back). See Figure 2-11.



## ACCOUNTING FOR EVIDENCE

The evidence ledger must be a bound record book (FSN 7530-00-286-8363). It will provide accountability through cross referencing DA Form 4137. The document numbers assigned to evidence come from this ledger. The evidence ledger must follow the disposition schedule set by AR 25-400-2. The ledger will be destroyed three years after final disposition of all items entered in it.

<b>EVIDENCE/PROPERTY TAG</b> <small>For use of this form, see AR 195-5, the proponent agency is GOCBOPS</small>		
<b>DOCUMENT NUMBER</b> 1985-XX		
<b>MPR/CID CONTROL NUMBER</b> 5753-XX-CID063		
<b>ITEM NUMBER</b>  <u>  1  </u> <b>OF</b> <u>  4  </u> <b>ITEM</b>		
<b>TIME</b> 1155	<b>DATE</b> 16 SEP XX	<b>INITIALS</b> JMP
<b>REMARKS</b>  Fatigue Cap		

**DA FORM 4002, JUL 92**  
Replaces DA Form 4002, 1 JUL 78 which is obsolete

Figure 2-6. Evidence/Property Tag (DA Form 4002).

<b>EVIDENCE/PROPERTY CUSTODY DOCUMENT</b>				MPR: CID SECURITY NUMBER <b>0005-85-CID063</b> CID REPORT: CID ROR NUMBER <b>0005-85-CID063-46846</b>	
For use of this form see AR 190-46 and AR 195-6; the proponent agency is US Army Criminal Investigation Command					
<b>RECEIVING ACTIVITY</b> Fort McClellan FO, Third Region, USACIDC			<b>LOCATION</b> Fort McClellan, AL 36205-5000		
<b>NAME, GRADE AND TITLE OF PERSON FROM WHOM RECEIVED</b> <input type="checkbox"/> OWNER <input checked="" type="checkbox"/> OTHER Crime Scene			<b>ADDRESS (Include Zip Code)</b>  N/A		
<b>LOCATION FROM WHERE OBTAINED</b> 3673-B Church Road (Living Room) Fort McClellan, AL 36205			<b>REASON OBTAINED</b>  Evidence		<b>TIME/DATE OBTAINED</b>  0900 to 1130 2 Jan 85
<b>ITEM NO</b>	<b>QUANTITY</b>	<b>DESCRIPTION OF ARTICLES</b> <small>(Include model, serial number, condition and unusual marks or scratches)</small>			
1	1	Baseball, approximately 2½" in diameter, brand name Wilson, white and red in color, leather like construction, scuffed, marked under the brand name Wilson, PGP, 2 Jan 85, 0900. (Right top desk drawer)			
2	1	Drinking glass, about 4 inches in height, clear in color, glass construction; marked on bottom of glass PGP, 2 Jan 85, 0904. (Right middle desk drawer)			
3	1	Bottle labeled Jim Beam, quart size, about 10 inches in height, no visible contents, clear in color, glass construction, marked on bottom of bottle, PGP, 2 Jan 85, 0905. (On top of coffee table)			
4	1	Cigarette butt, about one inch long, white in color, partially burnt and flattened condition, labeled Kent, placed in vial, both vial and seal marked PGP, 2 Jan 85, 0915 0005-85-CID063. (In ash tray on coffee table)			
5	1	Bag, about four by five inches, brown paper construction, approximately half full, containing suspected marihuana, marked on bag and seal PGP, 2 Jan 85, 1130 005-85-CID063. (Left top dresser drawer)			
XXLAST ITEMXX					
<b>CHAIN OF CUSTODY</b>					
<b>ITEM NO</b>	<b>DATE</b>	<b>RELEASED BY</b>	<b>RECEIVED BY</b>	<b>PURPOSE OF CHANGE OF CUSTODY</b>	
1 thru 5	2 Jan 85	SIGNATURE NA NAME, GRADE OR TITLE NA	SIGNATURE <i>[Signature]</i> NAME, GRADE OR TITLE Peter G. PAUL, SA	Evaluation as Evidence	
1 thru 5	2 Jan 85	SIGNATURE <i>[Signature]</i> NAME, GRADE OR TITLE Peter G. PAUL, SA	SIGNATURE <i>[Signature]</i> NAME, GRADE OR TITLE Roger R. LIST, SA		
4 and 5	3 Jan 85	SIGNATURE <i>[Signature]</i> NAME, GRADE OR TITLE Roger R. LIST, SA	SIGNATURE Reg Mail NAME, GRADE OR TITLE # 1234	Fwd to USACIL-CONUS for exam	
4 and 5	6 Jan 85	SIGNATURE Reg Mail NAME, GRADE OR TITLE # 1234	SIGNATURE <i>[Signature]</i> NAME, GRADE OR TITLE Ralph E. DAVIS, CW3		
4 and 5	20 Jan 85	SIGNATURE <i>[Signature]</i> NAME, GRADE OR TITLE Ralph E. DAVIS, CW3	SIGNATURE Reg Mail NAME, GRADE OR TITLE # 5678	Ret to Submitter	

DA FORM 4137  
1 JUL 78

Replaces DA FORM 4137, 1 Aug 74 and DA FORM 4137A Privacy Act Statement 28 Sep 75 which are Obsolete

DOCUMENT NUMBER 7-85

CHAIN OF CUSTODY (Continued)				
ITEM NO	DATE	RELEASED BY	RECEIVED BY	PURPOSE OF CHANGE OF CUSTODY
4 and 5	24 Jan 85	SIGNATURE Reg Mail NAME, GRADE OR TITLE # 5678	SIGNATURE <i>Roger R. List</i> NAME, GRADE OR TITLE Roger R. LIST, SA	Rec'd by Evidence Custodian
1 thru 5	14 Feb 85	SIGNATURE <i>Roger R. List</i> NAME, GRADE OR TITLE Roger R. LIST, SA	SIGNATURE <i>Peter J. Paul</i> NAME, GRADE OR TITLE Peter J. KANE, MAJ, JAGC	Rel to TC for Court
1 thru 5	15 Feb 85	SIGNATURE <i>Peter J. Paul</i> NAME, GRADE OR TITLE Peter J. KANE, JAGC	SIGNATURE <i>Roger R. List</i> NAME, GRADE OR TITLE Roger R. LIST, SA	Ret to Evidence Custodian
1 and 2	8 Mar 85	SIGNATURE <i>Roger R. List</i> NAME, GRADE OR TITLE Roger R. LIST, SA	SIGNATURE <i>Paul J. Kelley</i> NAME, GRADE OR TITLE Paul J. KELLEY, CW3, USA	Ret to owner Final Disposition
3, 4, 5	8 Mar 85	SIGNATURE <i>Roger R. List</i> NAME, GRADE OR TITLE Roger R. LIST, SA	SIGNATURE Item 4,5 BURNED/Item 3 CRUSHED NAME, GRADE OR TITLE DESTROYED	Final Disposition
		SIGNATURE NAME, GRADE OR TITLE	SIGNATURE NAME, GRADE OR TITLE	
		SIGNATURE NAME, GRADE OR TITLE	SIGNATURE NAME, GRADE OR TITLE	
		SIGNATURE NAME, GRADE OR TITLE	SIGNATURE NAME, GRADE OR TITLE	
FINAL DISPOSAL ACTION				
RELEASE TO OWNER OR OTHER (Name/Unit) Item 1 and 2, CW3 Paul J. KELLEY, Co B, HQ Comd, Ft McClellan				
DESTROY Items 3, 4, and 5				
OTHER (Specify)				
FINAL DISPOSAL AUTHORITY				
ITEM(S): 1 thru 5 ON THIS DOCUMENT, PERTAINING TO THE INVESTIGATION INVOLVING PFC John S. DOE (Grade)				
Co A, 1st Bn, 5th Tng Bde, Ft McClellan, AL (Name) (Organization) (OFF (ARE) NO LONGER)				
REQUIRED AS EVIDENCE AND MAY BE DISPOSED OF AS INDICATED ABOVE (If article(s) must be retained, do not sign, but explain in separate correspondence.)				
Hugh H. JOYCE, CPT, JAGC (Typed/Printed Name, Grade, Title) <i>Hugh H. Joyce</i> (Signature) 7 Mar 85 (Date)				
WITNESS TO DESTRUCTION OF EVIDENCE				
THE ARTICLE(S) LISTED AT ITEM NUMBER(S) 3, 4, and 5 (NAME) (WERE) DESTROYED BY THE EVIDENCE CUSTODIAN, IN MY PRESENCE, ON THE DATE INDICATED ABOVE				
SA Hubert L. HARRISON, Ft McClellan Field Office (Typed/Printed Name, Organization) <i>Hubert L. Harrison</i> (Signature)				

Figure 2-8. Evidential Chain of Custody, Recorded on DA Form 4137 (Back).

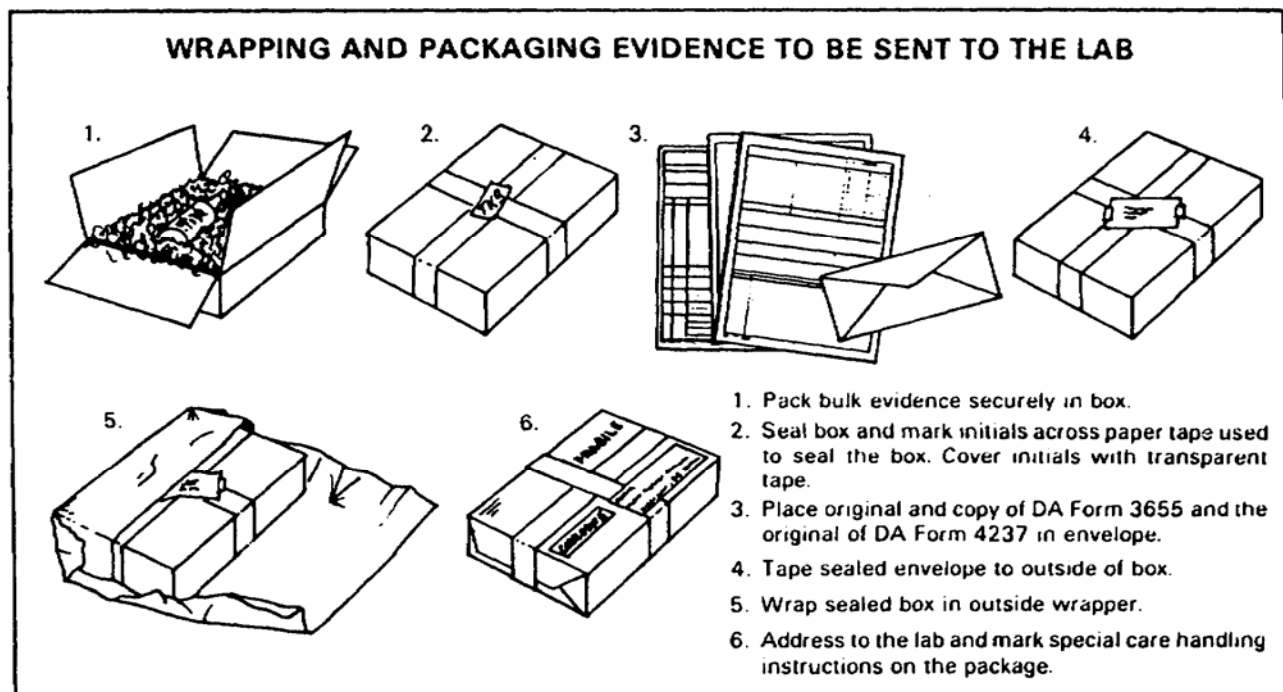


Figure 2-9. Wrapping and Packing Evidence to be Sent to the Lab.

CRIME LAB EXAMINATION REQUEST For use of this form, see AR 195-8; the proponent agency is the United States Army Criminal Investigation Command.		LAB USE ONLY	
TO: (Include Zip Code)  PO Drawer L Fort Gillem Forest Park, GA 30051-1386  In order: ATTN: Fingerprint Division Firearms Division Documents Division		FROM: (Include Zip Code)  Commander Ft McClellan Field Office Third Region, USACIDC Ft McClellan, AL 36205-5000	
		REFERRAL NUMBER	
		RECEIVED	RETURNED
		REGIS MAIL	REGIS MAIL
		RY EXP	RY EXP
		HAND	HAND
		DATE	DATE
		RECEIVED BY	
		EVIDENCE RECEIPT	
		RECEIVED	INITIATED
1. CONTRIBUTOR CASE NUMBER 78-CID023-01346	2. INVESTIGATOR'S NAME SA Josh M. Billings	3. AUTOVON AND PHONE NUMBER 865-3330	
4. SUSPECT(S) (Last, first and middle name(s))  SMITH, Joseph Calvin			
5. VICTIM(S) (Last, first and middle name(s))  TACKETT, John E.			
6. TYPE OF OFFENSE Burglary Larceny	7. ONE COPY OF EVIDENCE RECEIPT INCLOSED WITH EVIDENCE <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	8. OTHER EVIDENCE PREVIOUSLY SUBMITTED ON THIS CASE <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
9. IF "YES" IN ITEM 8, LIST OTHER SUSPECT(S), DATE SUBMITTED, UNIT CASE AND LABORATORY REFERRAL NUMBER(S)  N/A			
10. EVIDENCE SUBMITTED			
a. EXHIBIT	b. DESCRIPTION OF EXHIBIT		
1	.32 cal pistol, SN 11149. (Item 1, 7-85)		
2	piece of cloth, blue in color, torn. (Item 3, 7-85)		
3	Three black fingerprint lifters containing latent prints. (Item 4, 7-85)		
4	Plaster cast. (Item 5, 7-85)		
5	Piece of paper, containing writing. (Item 1, 8-85)		
6	Handwriting exemplars prepared by SMITH. (Item 1, 10-85)		
7	DA Form 2-1, containing the signature of Joseph C. SMITH. (Item 1, 11-85)		
8	DD Form 93, containing the signature of Joseph C. SMITH. (Item 2, 11-85)		
9	DD Form 369, containing the signature of Joseph C. SMITH. (Item 3, 11-85)		
10	DA Form 1695, containing the signature of Joseph C. SMITH. (Item 4, 11-85)		
11	VA Form 29-8285, containing the signature of Joseph C. SMITH. (Item 5, 11-85)		
12	VA Form 29-8286, containing the signature of Joseph C. SMITH. (Item 6, 11-85)		
13	Fingerprints and palm prints of SMITH. (Item 1, 12-85)		
14	Shirt, blue in color with a hole in the shirt. (Item 1, 13-85)		
15	Shoe, left, brown in color. (Item 2, 13-85)		

DA FORM 3655  
1 AUG 74

REPLACES DA FORM 3655-R, 1 NOV 70, WHICH IS OBSOLETE.

Figure 2-10. Evidence Examination Request, Recorded on DA Form 3655 (Front).


10. EVIDENCE SUBMITTED (Continued)	
a. EXHIBIT	b. DESCRIPTION OF EXHIBIT
	Sample
<p><b>11. EXAMINATION(S) REQUESTED</b> (Briefly furnish any information or instructions that might assist the laboratory in examining, evaluating or returning evidence and/or report.)</p> <p>Determine if Exhibit 1 contains latent fingerprints and if it is in proper working order. If identifiable prints are discovered on Exhibit 1, determine if they match Exhibit 13, and also if the latents of Exhibit 3 match Exhibit 13. Determine if Exhibit 2 came from Exhibit 14. Determine if SMITH, who originated the signatures on Exhibits 6, 7, 8, 9, 10, 11 and 12 executed Exhibit 5. Determine if Exhibit 15 made the impression in Exhibit 4.</p> <p>Determine if Exhibit 1 is operable and in good working order. Has Exhibit 1 been fired since last cleaned? Determine if Exhibit 1 has been involved in any outstanding criminal incidents. Perform any other tests you deem necessary.</p> <p><u><b>BRIEF DESCRIPTION OF INCIDENT:</b></u></p> <p>Investigation disclosed that on 24 Sept 85, SMITH, using an undetermined object, broke a window in the rear of TACKETT's quarters, entered and removed a Panasonic AM/FM Amplifier, Akai Tape Deck, and Dual turn-table. Exhibit 1 was discovered on the floor near the stereo cabinet. Exhibit 5 was found on the kitchen table in TACKETT's quarters. Exhibit 2 and 4 obtained during crime scene processing.</p>	
Evidence above has not been examined by another expert in the same scientific field.	
<b>TYPED/PRINTED NAME OF REQUESTOR</b>  JOSH M. BILLINGS	<b>SIGNATURE</b> 
<b>DATE</b> 25 Sep 85	

Figure 2-11. Evidence Examination Request, Recorded on DA Form 3655 (Back).

The cover of the evidence ledger (see Figure 2-12) should contain the following information:

- o Name of organization or activity responsible for the evidence room.
- o Dates spanned by the entries.

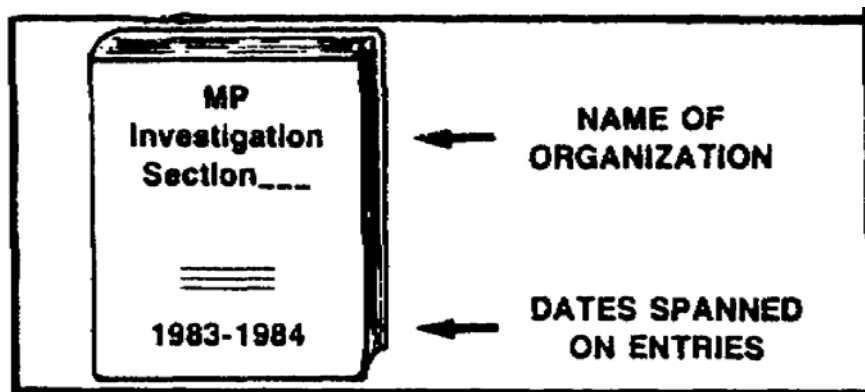


Figure 2-12. Evidence Ledger Cover.

Processing DA Form 4137.

The evidence custodian has a specific procedure to follow after receiving evidence. This procedure is listed below. The evidence custodian--

- o Checks DA Form 4137. Corrects errors if necessary.
- o Does not open any sealed container of fungible evidence. Notes "SCRCNI" in "Purpose of Change of Custody" column on DA Form 4137.
- o Assigns a document number. See Figure 2-13.

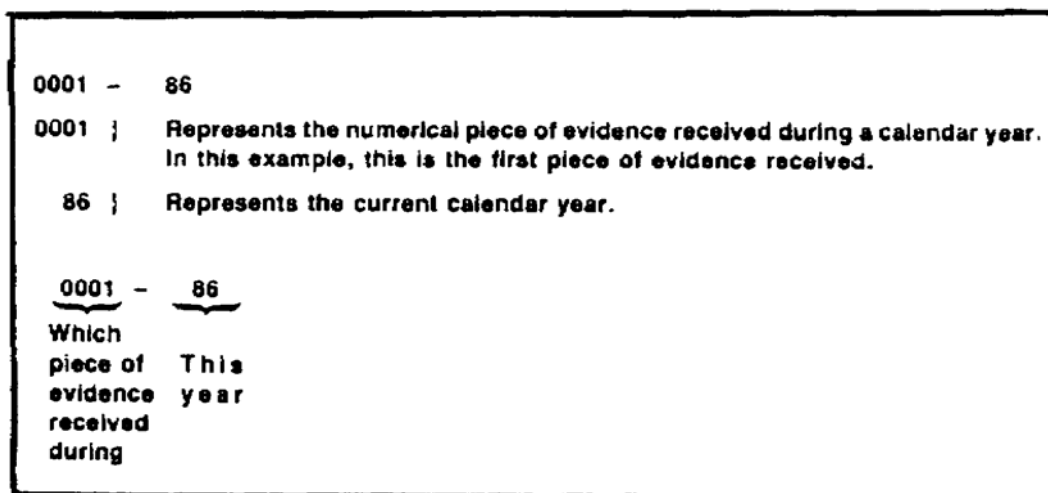


Figure 2-13. Document Numbers.

- o Distributes DA Form 4137 after the chain of custody is complete. Makes sure all copies have a document number. See Figure 2-14.

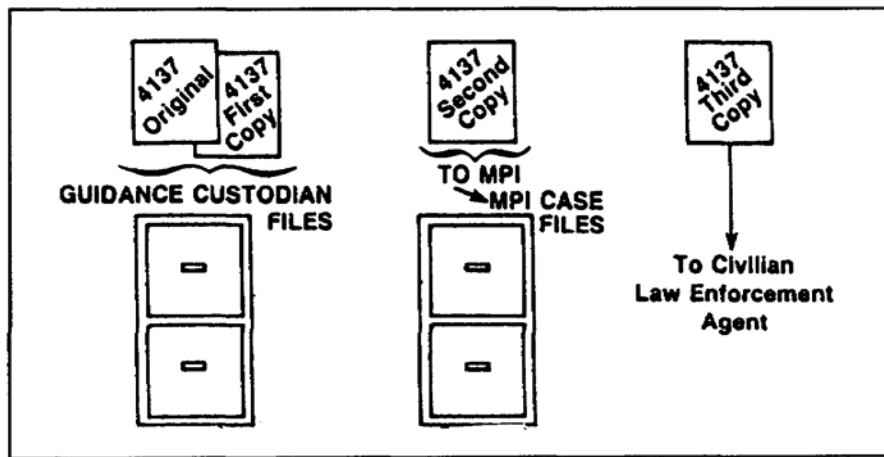


Figure 2-14. Distribution of DA Form 4137.

- o Shows the location of evidence in the evidence room on the bottom margin of DA Form 4137. He or she makes the note using a pencil.
- o Files the original and first copy of DA Form 4137. Folder must be not thicker than 3/4". Limit folder to 50 documents. Shows number and year of enclosed documents on the outside of the folder. See Figure 2-15.

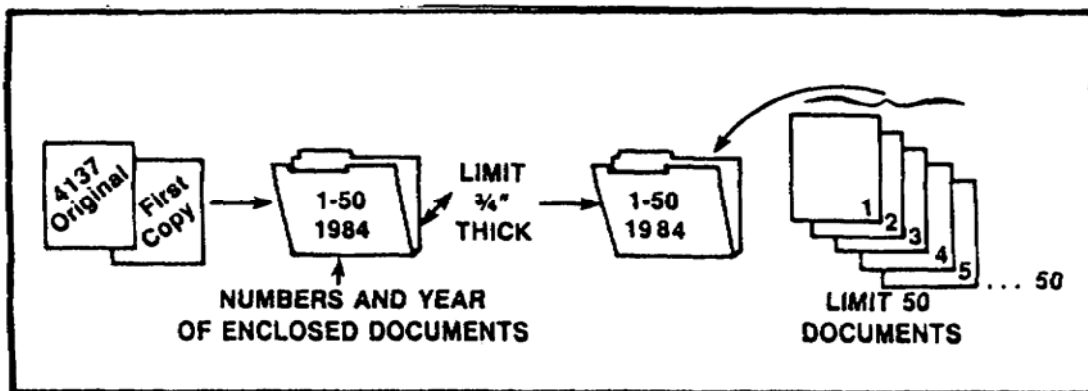


Figure 2-15. DA Form 4137, Document File Folder.

- o Established a "Supreme File" when temporarily releasing evidence from the evidence room.

The original DA Form 4137 will go with the evidence to whomever is requesting it for temporary release. In order to keep abreast of the form and evidence, a suspense file is established.



For this file, the first copy of DA Form 4137 is detached from the original and put in suspense. The title of the file corresponds to the reason the evidence was temporarily released. There are three major types of suspense files:

- o USACIL--for evidence sent to laboratories.
- o ADJUDICATION--for evidence released to Article 32 investigation officers, courts, staff judge advocate (SJA) officers, and other persons for legal proceedings.
- o PENDING DISPOSITION APPROVAL--when the original is sent to the SJA for approval of disposition. See Figure 2-16.

Other types of suspense files may be needed as management tools.

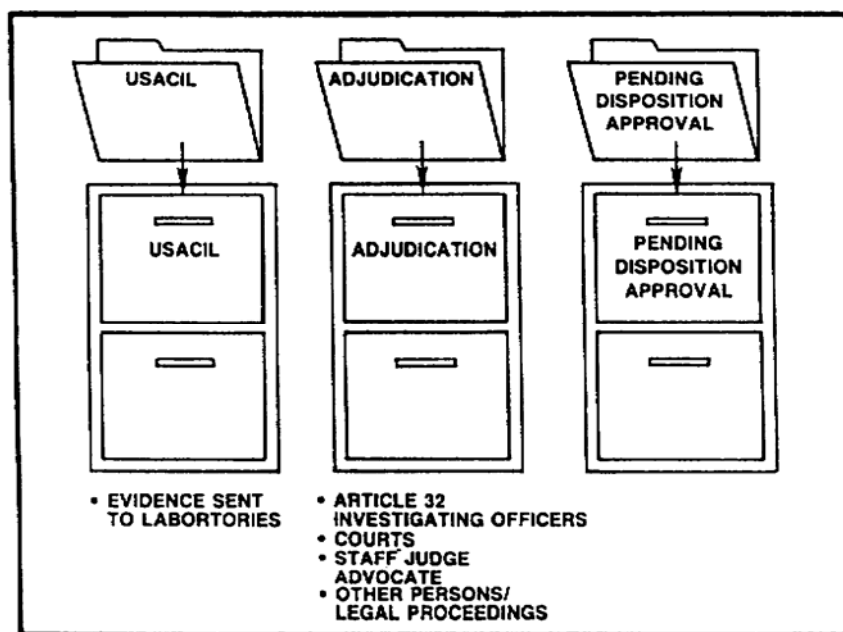


Figure 2-16. Suspense Files.

### Disposition of Evidence

After final disposition of evidence has been made, put the original voucher in a separate evidence voucher file. File number 195-5a has been set up for this purpose. It will be maintained in the evidence room. The vouchers will be disposed of in accordance with AR 25-400-2. After the original voucher has been filed, any remaining vouchers may be destroyed.

When the voucher pertains to a Report of Investigation (ROI) or Military Police Report (MPR), a copy will be forwarded to the US Army Crime Records Center (USACRC) as an exhibit to the final report. If the evidence was collected after the final report was submitted, a copy of the voucher will be

forwarded as an exhibit to the supplemental report. A copy of the voucher will also be attached to the office file copy of the report.

A copy will be made from the suspense copy of DA Form 4137 and placed in the evidence voucher file (noting the disposition of the original form) if the original DA Form 4137--

- o Is entered as a permanent part of the record of trial.
- o Accompanies evidence released to an external agency.
- o Is not available for any other reason.

## REMOVING EVIDENCE

Evidence may be removed from the evidence room only for permanent disposal and temporary release for specific reasons.

There are two common reasons for temporary removal of evidence. They are--

- o Transmittal to a crime lab for examination for legal reasons.
- o Presentation at a court-martial or hearing following Article 32, UCMJ.

The person who receives temporary custody of evidence must--

- o Sign in the "Received By" column of DA Form 4137 in the "Chain of Custody" portion.
- o Safeguard and maintain chain of custody until evidence is returned.

When the evidence custodian releases the evidence temporarily, there are strict procedures which must be followed. See Figure 2-17.

Sometimes items listed on the same DA Form 4137 must go to different places. If so, the same procedure is followed as shown in Figure 2-18. Use copies of DA Form 4137 to accompany evidence. Note on the original form that copies have been made.

## PRIMARY CUSTODIAN

For USACIDC activities, evidence custodians must--

- o Be accredited enlisted agents.
- o Warrant officer if approved by USACIDC Group Commander.
- o DA civilian special agent or investigative operations assistant if required.

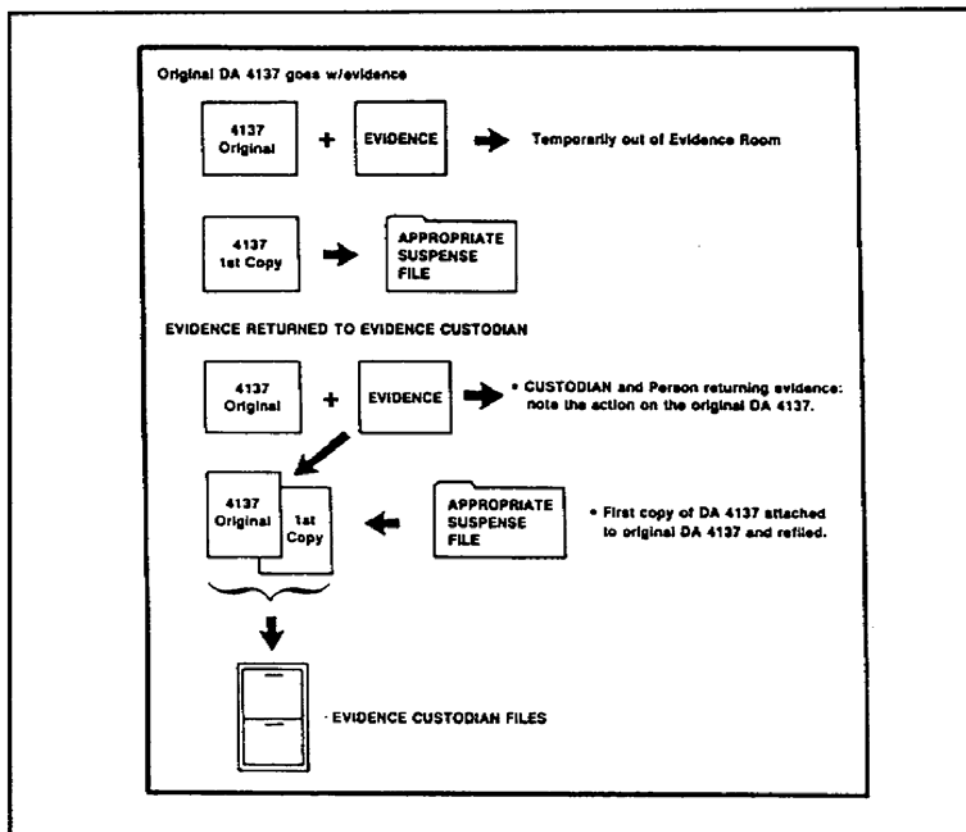


Figure 2-17. Temporary Release of Evidence.

For MP activities, evidence custodians must be a--

- o Commissioned officer.
- o Noncommissioned officer in MOS 95B/C, grade E5 or higher.
- o DA civilian employee, grade level determined by the local civilian personnel office (must have favorable background investigation).

If sufficient or qualified military or civilian personnel are not available, exceptions may be made by the installation commander.

The field office, region, or commanding general USACIDC may appoint the evidence custodian. AR 195-5 must be cited as the authority for appointments of evidence custodians. A copy of the appointing paper work must be kept in the depository 310-2c file.

Primary evidence custodians are responsible for--

- o Accountability, preservation, safeguarding, and disposition of all evidence received in the depository.
- o Maintenance of all evidence records in accordance with AR 195-5.

- o Protection of evidence from loss, deterioration, and unnecessary damage.

## ALTERNATE CUSTODIANS

Alternate custodians have the same prerequisites as primary evidence custodians.

Each alternate evidence custodian must be appointed, as an additional duty, by the same authority appointing the primary custodian. A copy of the appointing document must be maintained in the evidence depository under file number 310-2c. AR 195-5 must be cited as authority for appointment of alternate evidence custodians.

The alternate evidence custodian assumes all duties and responsibilities of the primary evidence custodian during the temporary absence of the primary evidence custodian. Temporary absence of the primary evidence custodian is considered to be a period of more than 24 hours but not more than 30 days.

### Transfer of Responsibilities

Temporary custodianship. Transfer the responsibilities between primary and alternate evidence custodians using the following procedures:

- o Upon assuming duties of the primary custodian, the alternate custodian must enter and sign the following statement in the evidence ledger immediately below the last entry.

#### Alternate's Statement

I,       (Name)      , on       (Date)      , assumed all duties of the primary evidence custodian during the temporary absence of the regularly appointed custodian. I accept responsibility and accountability for all evidence contained in the evidence room.

(Signature of Alternate Evidence Custodian)

- o Upon the primary custodian's return from temporary absence he/she will ensure that the records are correct and the evidence accounted for is properly documented. The primary custodian must enter and sign the following statement in the evidence ledger immediately below the last entry.

#### Primary's Statement

I,       (Name)      , on       (Date)      , resume my position as primary evidence custodian and accept responsibility and accountability for all evidence contained in the evidence room.

(Signature of Primary Evidence Custodian)

- o If the primary custodian discovers the alternate has made an incorrect entry during his or her temporary tenure, it must be immediately brought to the attention of the CID supervisor or PM. The primary custodian must also prepare a certificate outlining the error and what action was taken to correct the discrepancy. The original of this certificate must be filed with the applicable DA Form 4137. It may be filed in a file folder under number 195-5a if the error does not apply to DA Form 4137.

## Evidence Ledger

The evidence ledger is the log that shows accountability of items of evidence. Try to fill the ledger before starting a new one. If there are only a few pages left blank, they need not be used for the following year. A busy MPI section may fill more than one ledger per year. Conversely, a section with few entries per year could use the same ledger for several years. Look at Figure 2-18 for a sample evidence ledger.

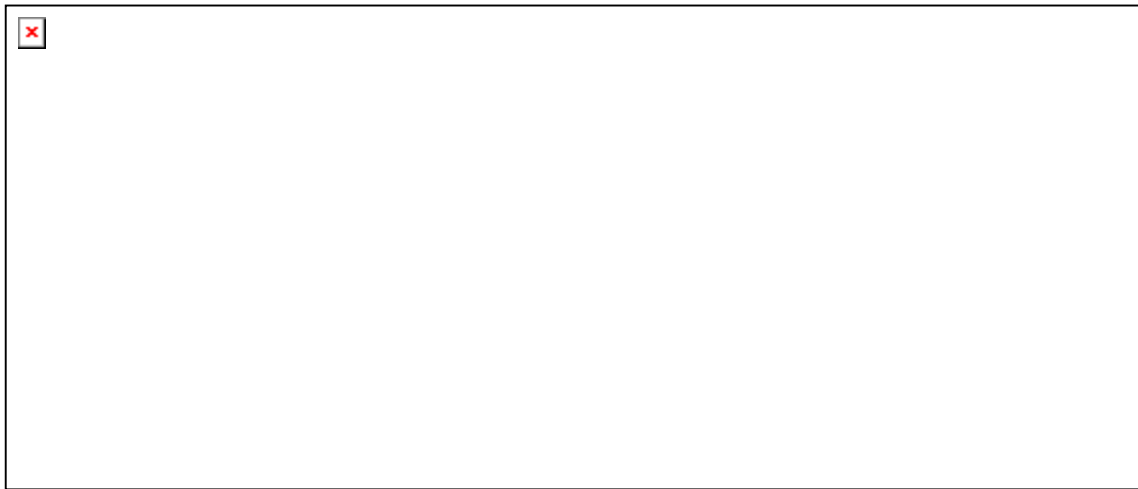


Figure 2-18. Evidence Ledger.

Notice there are six columns. They will span two facing pages when the book is opened. Both vertical and horizontal lines should be used to separate entries. All entries should be in black or blue ink.

The six columns should be completed as follows:

- o Document number and date received. This column contains the document number assigned to the evidence custody document. The date the DA Form 4137 was received in the evidence room is entered below this number.
- o CID sequence number or MPR number. The number assigned to the investigation the evidence pertains to is entered in this column. CID

units may use the MPR number as well as the CID sequence number when the military police prepare an MPR on the same investigation.

- o Brief description of evidence. A brief description of the evidence is entered in this column. The item number from the DA Form 4137 is entered also for cross-reference. Fungible evidence sealed in a container will be briefly described from the data on the DA Form 4137. This entry does not imply that the evidence custodian has inventoried the items.
- o Date of final disposition. The date the evidence was disposed of, as shown in the “Chain of Custody” section of the DA Form 4137, is entered in this column. When a DA Form 4137 contains several items and they are not disposed of on the same date, the date of disposition for each item should be shown opposite its description. When all the items in the entry are disposed of on the same date, only one date is entered, followed by the words “all items” (for example, 25 Jan 84-all items).
- o Final disposition. A brief note on the means of final disposition is entered in this column opposite the item's description. When all items in the entry have been disposed of in the same manner, the means of disposal may be listed once. Precede the entry by the words “all items”; for example, all items burned.
- o Remarks. This column may be used to record any information the evidence custodian thinks is necessary. This may include cross-reference to another DA Form 4137 that contains evidence from the same investigation; names of owners, subjects, investigators; notations to show the presence of .0015 funds; or the results of laboratory examinations. When fungible evidence is received in a sealed container and is not inventoried, the notation SCRCNI will be made.

When signatures are required in the log, extend the entry across both pages. See Figure 2-19. Draw a straight line from the entry to the right and left margins of the ledger.

After the last entry in a calendar year, close the book. A statement should be made with the following information:

- o DA Form 4137 documented in ledger.
- o Document the numbers of DA Form 4137..
- o Document calendar year.

The first entry of the next calendar year should be entered on the next page. If the bound record book is full, start a new book. (See Figure 2-20.)

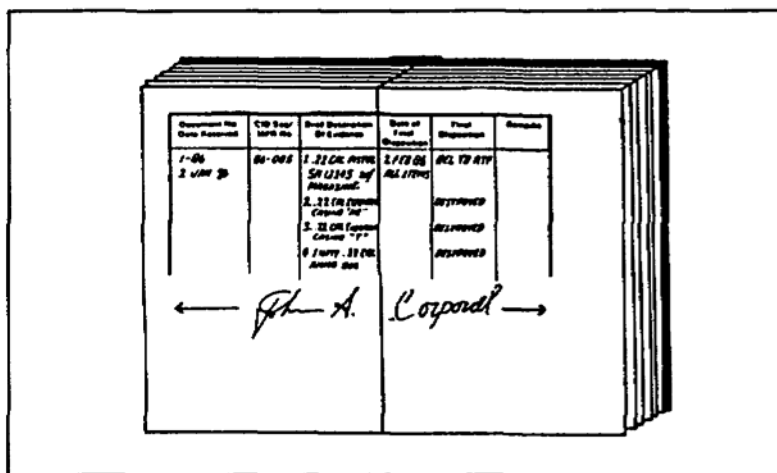


Figure 2-19. Signatures in Evidence Ledger.

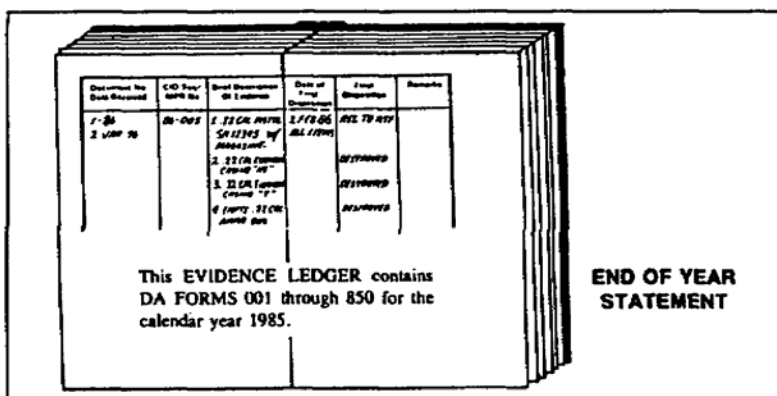


Figure 2-20. Evidence Ledger End of Year Entry.

## PART C - EVIDENCE STORAGE

The evidence depository is most often a room constructed for the specific purpose of securing evidence. Circumstances may dictate the use of some other type of structure, area, or container. Evidence custodians must be aware of the acceptable standards required of a structure that is not constructed to current requirements. It is the responsibility of each custodian to see that the depository meets current standards as covered in Chapter 4 of AR 195-5. When you assume duties as an evidence custodian, conduct your own inspection of the security standards. (See Figure 2-21.)

These requirements may not have been incorporated in the original construction of the depository. If deficiencies are noted, bring them to the attention of the appropriate commander and submit a work order to make the desired change. Retain a copy of the work order on file for IG inspections.

The evidence depository must be located in the same building where the CID, provost marshal, security officer, operation, or administrative staffs are located.

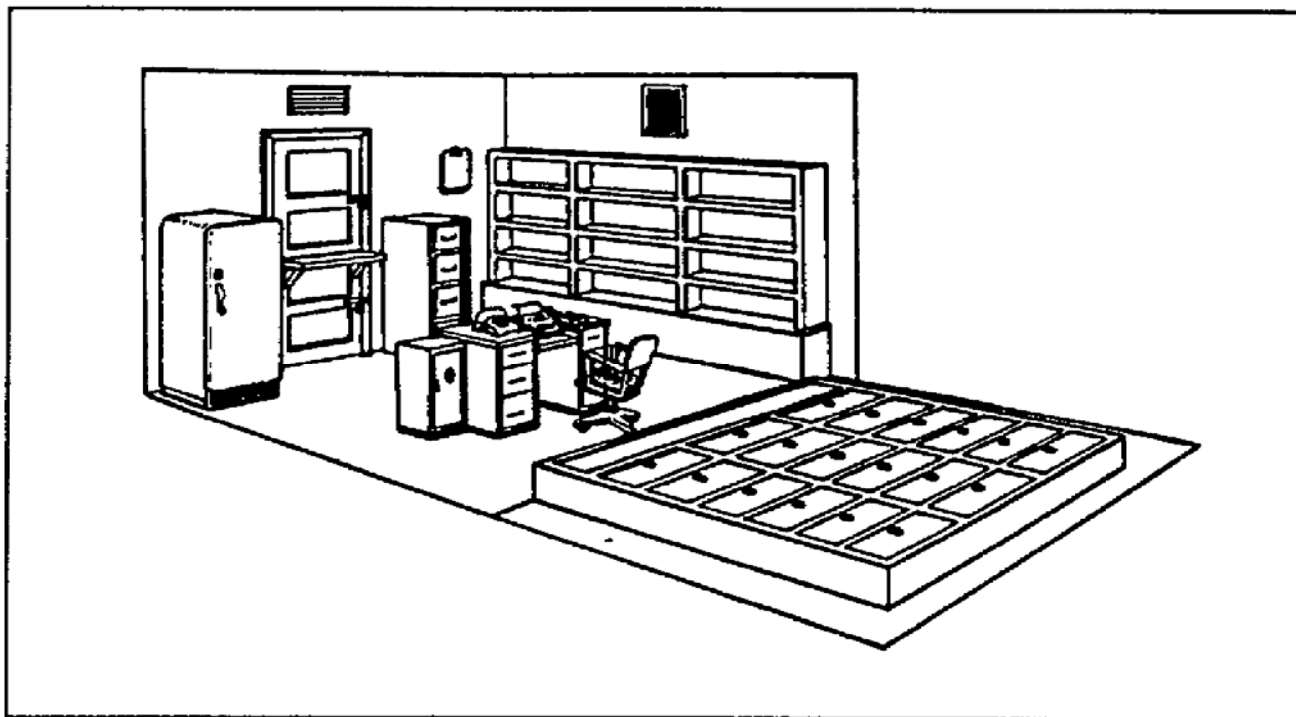


Figure 2-21. Typical Evidence Depository Room.

## EVIDENCE DEPOSITORY

The room used as the evidence depository must have walls extending from the floor to the true ceiling. Walls and ceilings may be of masonry or wood construction. Walls or ceilings that are of wooden stud construction will have a combined exterior and interior thickness of at least one inch. Permanently installed flooring of other than masonry construction may be used provided the floor cannot be breached without causing considerable damage to the building structure.

If suitable walls and ceilings are not available, 6-gauge steel mesh with 2-inch diamond grid may be permanently affixed to the interior wall or ceiling. Walls or ceilings may also be lined with steel plates at least 1/8" thick, permanently affixed to the floor. Walls or ceilings may be installed within a room for use as an evidence depository when the room, walls, flooring, or ceiling do not meet structural standards.

When installation of a cage creates a space between the original walls of the room and the cage, the additional space must not be used for storage of evidence. It may be used as a work area for packaging evidence or for storage of packaging materials.

### Doorways

Not more than one doorway may allow access to and from the evidence depository. Entrance into the evidence depository must require opening two successive doors. When an interior steel mesh cage is used, the cage door



will suffice as the second door. In this case, the outer door must be a solid core wooden or metal plate, or 6-gauge steel mesh (equivalent of that specified for fabricated steel mesh cage construction) and welded onto a metal frame.

When the steel mesh cage is not used, the doorway of the evidence room must be covered by two doors hung one behind the other. One door may be constructed of a material of the type used for constructing a steel mesh cage welded to a steel frame. The second door may be constructed of solid core wood, steel, or be a hollow wooden door reinforced with a steel plate not less than 1/8-inch thick.

If a barred door is used, the vertical steel bars must be at least 3/8-inch thick and must not be spaced more than four inches apart with horizontal bars welded to the vertical bars and spaced so that openings do not exceed 32 square inches. Either door may be hung on the outside of the doorway. The inner and outer doors must be hung to prevent the door frame from being separated from the door casing.

Door hinges and pins should be installed on the inside; if not, they must be installed so doors cannot be removed without seriously damaging the door or door jamb. All exposed hinge pins will be spot welded or branded to prevent removal. This is not required when safety stud hinges are used or when the hinge pins are on the inside of the doors. Specifications for construction of new evidence rooms must include these standards.

## Locks

The outer door must be secured by one high security key padlock and hasp. The inner door must be secured by one changeable combination padlock. The padlock for the outer door of the evidence room must conform to military specifications MIL-P43607 (GL) (High Security Padlock) NSN 5340-00799-8248. The changeable combination padlock for the inner door must conform to requirements of military specification FF-P-110 (Sergeant and Greenleaf padlock, 8077A/8078A series), is the minimum acceptable changeable combination lock authorized. All locks must be used with heavy steel hasps and staples. The hasps and staples must be welded or fastened to the door and door jamb with smooth headed bolts or rivets that penetrate the entire thickness of the door or door jamb. The bolts or rivets must be spot welded or branded on the inside of the door or door facing to prevent their being pulled out.

**Fabricated Staples.** Evidence depositories under 24-hour surveillance need have only one door. In this case, the single door must be solid wood or covered with 1/8-inch steel plate. The same requirements on the padlock, staples, and hasps exist as for a two-door depository.

Many custodians have found that locally fabricated staples for the high security padlock are made of soft steel. Testing the strength of this staple is recommended. Can it be cut readily with a hand-held hacksaw blade? If it can, it obviously is too soft.

## Windows

The number of windows must be kept to the minimum. Preferably there should not be windows at ground level. All windows must be covered with steel or iron bars or steel mesh. When bars are used, they will be at least 3/8-inch thick, and vertical bars must not be more than 4-inches apart. Horizontal bars must be welded to vertical bars and spaced so that openings between bars do not exceed 32 square inches. Ends of the bars must be securely embedded in the wall or welded to a steel channel frame fastened securely to the window casing. Acceptable steel mesh can be locally fabricated from high carbon steel, not less than .15-inch thick, with a grid of not more than 2 inches from center to center. Six-gauge steel mesh with a 2-inch diamond grid may be used in areas where high carbon steel is not readily available. The steel mesh must be welded or secured to a steel channel frame and fastened to the building by smooth headed bolts extending through the entire window casing. The steel mesh must be spot welded or branded on the interior or cemented into the structure itself. If central air conditioning is not available, local units may be installed in windows or outside walls provided the same security measures are taken.

## Interior Security

A separate container for each category of sensitive evidence is not required. At least one container, depending on requirements, must be available for additional security of high value items such as watches and jewelry. Small amounts of narcotic evidence, such as a package of marijuana cigarettes, pillboxes, and capsules, may be stored in bins or shelves along with other evidence. All firearms and ammunition evidence will be stored in an approved safe. AR 190-11 does not apply to evidence depositories. The containers may be field safes, filing cabinets, lockers, or locally fabricated containers capable of being secured with at least one locking device. Containers weighing less than 500 pounds must be secured to the structure so removal is as difficult as penetrating the container itself would be. This may be accomplished by use of a heavy chain secured to the container and fastened to a part of the building such as a radiator, water pipe, or eyelet installed for this specific purpose. When several containers are used, they may be fastened together without being fastened to the structure, providing the combined weight of all the containers fastened together is at least 500 pounds. The containers and any chains attached thereto may be secured with either heavy pin-tumbler padlocks or combination padlocks.

The evidence depository must be equipped with bins, cabinets, or shelves as space permits to allow for neat and orderly arrangement of evidence on hand. The use of adjustable shelves is recommended whenever possible. Uniform size envelopes arranged numerically by document numbers are recommended when storing small items such as controlled substances on shelves. Evidence depositories, whenever possible, should be of sufficient size to provide space for a table or desk within the depository itself for the custodian to use while processing incoming and outgoing evidence. A refrigerator is required as a permanent fixture in the evidence depository.

## INSPECTIONS AND INVENTORIES

The commander responsible for the evidence depository is responsible for monthly inspections. This inspection should check--

- o Orderliness.
- o Cleanliness.
- o Structural requirements.
- o Security requirements.

It is the commander's duty to ensure that evidence follows existing regulations in terms of--

- o Receipt of evidence.
- o Processing of evidence.
- o Safeguarding of evidence.
- o Disposition of evidence.

When the inspection is complete, an entry must be made into the evidence ledger. Figure 2-22 gives an example of the entry.

EVIDENCE LEDGER ENTRY AFTER INSPECTION
I, _____ (Name) _____, certify that on _____ (Date) _____, in accordance with AR 195-5, I conducted an inspection of the evidence depository. Evidence is being processed in accordance with AR 195-5 with (no exceptions or the following exceptions).
_____ (Signature)

Figure 2-22. Evidence Ledger Entry After Inspection.

Inventories must be scheduled and conducted--

- o Once each calendar quarter.
- o When there is a change of the primary custodian.
- o When evidence is lost.

- o Upon breach of security.

A written request must be initiated by the appropriate supervisor to the appropriate commander to appoint a disinterested officer to conduct quarterly inventories. The appointing authority will select an officer who is not a current member of USACIDC or assigned to military police activities. The appointing authority will also furnish the supervisor a copy of the appointing document.

The evidence custodian and the disinterested officer appointed must conduct the quarterly inventory.

#### Quarterly Inventories

Quarterly inventories must account for all evidence on hand by comparing evidence with the custody document and with corresponding ledger entries. The check is for similarity of descriptions of evidence in the description section of DA Form 4137 and the description column of the ledger.

Account for all evidence on temporary release by checking the suspense file to ensure evidence on temporary release is properly receipted or assigned the appropriate registered mail number.

In conducting the inventory, a list of the document numbers should be maintained and cross-checked with the ledger. This will ensure that all open entries in the ledger are accounted for. Evidence such as marijuana and drugs need not be subject to weighing for verification unless there appears to be a significant difference between the actual item and the description and laboratory weight or account.

The inventory officer must not handle sensitive or fragile evidence if such handling will affect the validity of the evidence (such as items being held for fingerprinting). In the event such evidence cannot be properly inventoried without the officer physically handling it, the supervisor must be contacted for resolution. At the conclusion of the inventory, all ledger entries not reflecting final disposition should be accounted for.

An inventory certificate must be written in the evidence ledger. Any deficiency regarding the accountability of evidence must be reflected in this certificate. Any administrative or security weaknesses, deficiencies, or recommendations not involving the accountability of evidence must be brought to the immediate attention of the evidence custodian and the appropriate commander. The written record of inventory in the evidence ledger is as follows:

We, the undersigned, certify that on (Date), per AR 195-5, a joint inventory was conducted of the evidence in the depository. All evidence was properly accounted for (with no exceptions or with the following exceptions).

(Signature of Officer)

(Signature of Evidence Custodian)

(Printed Name, Grade, Unit)

(Letter or DF, Issuing HQ)

#### Change of Custodian Inventories

A joint physical inventory of all evidence in the depository must be conducted by the incoming and outgoing primary evidence custodians upon permanent change of the evidence custodian.

Joint inventories by the incoming and outgoing primary evidence custodians may be conducted in conjunction with quarterly inventories by disinterested officers appointed as inventory officers. However, each type of inventory must be recorded separately. All evidence records must be carefully examined during the joint inventory to ensure proper documentation and accountability. All discrepancies must be resolved by the individual relinquishing custody of the evidence prior to transfer of accountability. There is no requirement for a joint inventory to be taken when the alternate custodian replaces the primary evidence custodian for 30 days or less. If it is known that the primary evidence custodian will be absent for more than 30 days, a joint inventory must be conducted prior to departure of the primary evidence custodian and another inventory must be accomplished upon return of the primary custodian. The primary and the alternate evidence custodian physically check the newly acquired evidence for proper markings and packing. They also check the safeguarding of fragile evidence which requires special handling. A temporary or permanent change of custodian inventories must be entered in the evidence ledger immediately below the last entry and signed by the incoming primary custodian and the outgoing primary custodian as follows:

I, (Name), on (Date), assumed all duties of the primary evidence custodian during the temporary absence of the regularly appointed custodian. I accept responsibility and accountability for all evidence contained in the evidence room.

(Signature of Alternate Evidence Custodian)

When a permanent change of primary evidence custodian is made, each original and first copy of the DA Form 4137 in the document file must be signed by the outgoing and incoming evidence custodians. (See Figure 2-23.)

The signing of each DA Form 4137 that is still active is, in addition to the following entry, placed in the evidence ledger:

I,           (Name)          , on           (Date)          , resume my position as primary evidence custodian and accept responsibility and accountability for all evidence contained in the evidence room.

(Signature of Primary Evidence Custodian)

### Lost Evidence or Breach of Security Inventories

Lost evidence or breach of security inventories will be made in the presence of the evidence custodian or alternate. The officer assigned to make the inquiry must certify his or her findings in the evidence ledger in the same format used for the quarterly report. Inquiries or investigations must be initiated by the appropriate provost marshal or USACIDC commander.

		CHAIN OF CUSTODY		
ITEM NO	DATE	RELEASED BY	RECEIVED BY	PURPOSE OF CHANGE OF CUSTODY
1 thru 5	2 Jan 86	SIGNATURE <i>Ralph E Davis</i> NAME, GRADE OR TITLE Ralph E. DAVIS, CW3	SIGNATURE <i>Peter G. Paul</i> NAME, GRADE OR TITLE Peter G. PAUL, SA	Change in Evidence Custodian
1	-	SIGNATURE	SIGNATURE	Re: Evidence

Figure 2-23. DA Form 4137 Signature.

### PART D - EVIDENCE DISPOSITION

A general rule for evidence is that it should be disposed of as soon as possible after its purpose has been accomplished.

When evidence is released to a trial counsel for judicial proceedings, it will be returned as soon as possible to the custodian for final disposition. The custodian will be notified immediately if the evidence is made part of the record of trial by the trial counsel. The custodian will then properly note the final action on DA Form 4137 (see Figure 2-24). This will be considered final disposition.

#### Known Subject Cases

When final action has been taken in known subject cases, the original custody document will be sent to the SJA of the commander with general courts-martial jurisdiction over the subject. If the evidence is no longer needed, the SJA will complete the final disposal authority part of the DA Form 4137.

When the SJA says the evidence must be held, this part of the form will not be completed. Write a brief memorandum for record (MFR) giving the reason the evidence is being retained and attach it to DA Form 4137.

ITEM NO	DATE	RELEASED BY	RECEIVED BY	PURPOSE OF CHANGE OF CUSTODY
4 and 5	24 Jan 86	SIGNATURE Reg Mail NAME GRADE OR TITLE #5678	SIGNATURE <i>Roger R. List</i> NAME GRADE OR TITLE Roger R. LIST, SA	Rec'd by Evidence Custodian
1 thru 5	14 Feb 86	SIGNATURE <i>Roger R. List</i> NAME GRADE OR TITLE Roger R. LIST, SA	SIGNATURE <i>Peter J. Kane</i> NAME GRADE OR TITLE Peter J. KANE, MAJ. JAGC	Rel to TC for Court
1 thru 5	15 Feb 86	SIGNATURE <i>Peter J. Kane</i> NAME GRADE OR TITLE Peter J. KANE, JAGC	SIGNATURE <i>Roger R. List</i> NAME GRADE OR TITLE Roger R. LIST, SA	Ret to Evidence Custodian
1 and 2	8 Mar 86	SIGNATURE <i>Roger R. List</i> NAME GRADE OR TITLE Roger R. LIST, SA	SIGNATURE <i>Selby G. Moody</i> NAME GRADE OR TITLE Selby G. MOODY, CW3, USA	Ret to owner Final Disposition
3 and 4	8 Mar 86	SIGNATURE <i>Roger R. List</i> NAME GRADE OR TITLE Roger R. LIST, SA	SIGNATURE <i>Sam Jones</i> NAME GRADE OR TITLE Sam Jones, SJA	Rel to Court Final Disposition

Figure 2-24. DA Form 4137.

In unusual cases, where a high risk of losing the original DA Form 4137 (like isolated units that must mail the DA Form 4137 to the servicing SJA for disposition approval), a letter may be substituted for disposition approval. When this is used, provide enough information to allow the SJA to make a decision. The return correspondence from the SJA giving disposition approval will be attached to the original DA Form 4137 for file at USACRC.

#### Unknown Subject Cases

Three months after an investigation is completed evidence may be disposed of from the investigation for which no subject has been identified.

When the subject is not known, the evidence custodian will obtain the approval of the commander, SAC, provost marshal, or representative, as appropriate. Their approval will be given by completing the final disposal authority section of the original DA Form 4137.

#### Items with no Value as Evidence

When laboratory analysis proves an item to have no value as evidence, the item may be disposed of. Before you dispose of any evidence, you must consult with the local SJA for approval. Controlled substances not associated with an investigation may immediately be disposed of. This does not require SJA approval.

#### Items not Practical or Desirable to Keep

When it is not practical or desirable to keep items of evidence, disposal action may start right away. Items like automobiles, serial numbered items, items required for use by the owner, undelivered mail, large amounts of money, and perishable or unstable items may be disposed of immediately. They are not put into the evidence room. Coordinate disposal with the SJA. The final

disposal authority portion of DA Form 4137 will be completed by the SJA. When it is not possible to get written approval of the SJA before the disposal of the evidence, oral permission will be obtained followed by written approval.

#### External Agencies

When evidence is permanently released to an external agency, the final disposition authority part of the DA Form 4137 will be completed. This will be the final disposition of the evidence.

#### Methods of Final Disposition

When a legal question on methods of disposal comes up, refer the question to SJA who will give legal advice. Methods of disposition for a variety of evidence are discussed below.

**US Government Property.** US Government property will be released to the organization to which it is issued.

**Personal Property.** Personal property that is legal to own will be released to the rightful owner.

**Treasury Checks.** US Government Treasury checks will be returned to the U.S. Secret Service and money orders from an APO money order facility will be returned to the issuing APO.

**Negotiable Instruments.** Other types of negotiable instruments (like money orders, travelers checks, and checks) owned by a business firm, will be released to the firm. If the firm does not want them returned, they will be destroyed.

Negotiable instruments and other documents obtained from a person will be returned, unless the owner does not want them. In this case, you will supervise their destruction.

**US Postal Money Orders.** US Postal money orders will be returned to the Postal Inspector in Charge of the Postal Division that originally provided the documents. AR 195-5 provides additional instructions.

**Known Standards.** Known document standards will be released to the agency or person from whom received or the rightful owner, as appropriate, unless they are not wanted. In this case, you will supervise their destruction.

**Documents of No Value.** Exemplars and other documents of no value to the person or agency from whom received will be destroyed under your supervision.

**Personal Property of Deceased or Missing Army Personnel.** Items of personal property that belong to deceased or missing Army personnel will be released to the summary court officer appointed to dispose of the decedent's effects.



**Controlled Substances.** Controlled substances will be destroyed in the presence of a witness who is a CID special agent, a soldier in the grade E6 or above, or a civilian in the grade of GS-7 or above. The witness must not be involved in the chain of custody. Destruction will be by burning or by a method that will make it permanently useless.

**Counterfeits and Equipment.** Normally, counterfeit currency and coins and counterfeiting equipment will be released to the nearest office of the US Secret Service (USSS). Unless the USSS directs otherwise, evidence of this type seized in the Far East will be sent to the USSS office in Hawaii. Evidence seized in Europe, Africa, or the Middle East will be sent to the USSS representative, US Embassy, Paris, France. Evidence seized in the Caribbean Sea and Central and South America areas will be sent to the USSS office in Hato Rey, Puerto Rico. Disposal of counterfeiting equipment should be coordinated with the supporting USSS office before release.

**Firearms and Ammunition.** US Government firearms and ammunition kept as evidence will be returned to the proper military unit. If the unit cannot be identified, firearms and ammunition will be released to the installation accountable officer per AR 710-2.

**Contraband, firearms, and ammunition kept as evidence** will be released to the USACIL. Coordinations must be made with the USACIL prior to transmitting the evidence.

**Legal personal weapons impounded for minor infractions** must be returned to the rightful owner when the requirements have been met and they are no longer needed as evidence.

**When evidence is of obvious value and the owner is unknown, or cannot be located, it will be turned in to the DRMO according to DOD 4160.21-M. Items with No Owner and No Value.** Items of evidence, found at crime scene that have no known owner and are of no value will be destroyed. These are items like match books and bottles. Crushing, burning, or other methods will be used to render the items useless and harmless.

**Money without an Owner.** When the owner of money is not known or cannot be located after reasonable attempts, the money will be turned in to a US Army Finance Officer. A DD Form 1131 (Cash Collection Voucher) will be used. A copy of the DD Form 1131 will be attached to the original custody document.

**Miscellaneous.** Post exchange items, commissary items, and items illegally introduced into a host country that are connected with black market, customs, and postal investigations will be disposed of according to local regulations, status of forces agreements, and law or customs of the host country.

**Limitation .0015 Contingency Funds (CID funds)** held as evidence will be disposed of per AR 195-4. CID funds that no longer have value as evidence will be promptly deposited with the local finance and accounting officer (FAO) on DD Form 1131. Before depositing funds with the FAO, personnel who prepare the DD Form 1131 will ensure that the accounting classification cited is the

same as the one on the voucher the CID funds were originally disbursed on. A copy of DD Form 1131 showing the return will be given to the proper certifying and approving officer.

#### Disposition of Controlled Substances

Controlled substances, such as marijuana, hashish, heroin, and cocaine held by the custodians, no longer of value as evidence, may be released for training detector dogs. CID and MP evidence custodians are authorized to release controlled substances subject to the restrictions established in AR 195-5.

Marijuana may also be used for training CID and MP personnel in the techniques of identification and “field testing,” subject to the provision above. With the exception that used marijuana, including the residue, will be returned to the evidence custodian for final disposal. Marijuana will not be kept any longer than needed to complete the training. It will be received and returned the same date. Marijuana approved for final disposal may be burned to familiarize personnel with the odor. The evidence custodian will carry this out in accordance with the manner prescribed for final disposal.

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## LESSON 2

### PRACTICE EXERCISE

#### INSTRUCTIONS

You have just finished reading the instructional material for Lesson 2. This lesson covered evidence handling. It is now time to check your understanding of the lesson. This is done by completing the practice exercise below. All of the questions are multiple-choice and are intended to measure your understanding of handling evidence. There is only one correct answer to each question. Try to answer all of the questions without referring to the lesson materials.

When you have completed all the questions, turn the page and check your answers against the correct responses. Each correct response is referenced to a specific portion of the lesson material. Review any questions you have missed or do not understand. When you have completed your review, continue to the next lesson.

1. You are conducting refresher training on the duties of the evidence custodian. You explain that it is imperative that evidence custodians maintain what?
  - A. A clean storage area.
  - B. Unbroken chain of signatures.
  - C. Good stock of office supplies.
  - D. A copy of all Army regulations.
  
2. You are conducting refresher training and are asked, "When may evidence be disposed of from an investigation in which no subject has been identified?"
  - A. Never.
  - B. Three months after investigation is completed.
  - C. Six months after investigation is completed.
  - D. When there is no subject, anytime.
  
3. You are conducting refresher training and are asked, "What controlled substances may be used for training detector dogs?"
  - A. Any controlled substance can be used.
  - B. Controlled substances such as marijuana, hashish, heroin, and cocaine.
  - C. Controlled substances are not necessary for training dogs.
  - D. Marijuana and cocaine may be used.

4. You have to destroy a controlled substance. This must be done in the presence of a witness; the witness must be in which pay grade?

- A. E4 or above, or civilian GS-5 or above.
- B. E5 or above, or civilian GS-6 or above.
- C. E6 or above, or civilian GS-7 or above.
- D. 01 or above, or civilian GS-11 or above.

5. As evidence custodian, you are assigned a structure to store all evidence in your custody. Which Army regulation will you use as a guide?

- A. AR 190-5.
- B. AR 195-4.
- C. AR 195-5.
- D. AR 196-22.

NOTE: Use the illustration that appears on the next page to answer questions 6 through 8.

6. Using the four illustrations you explain the various methods of search to your unit. Which would you identify as the zone or sector searches?

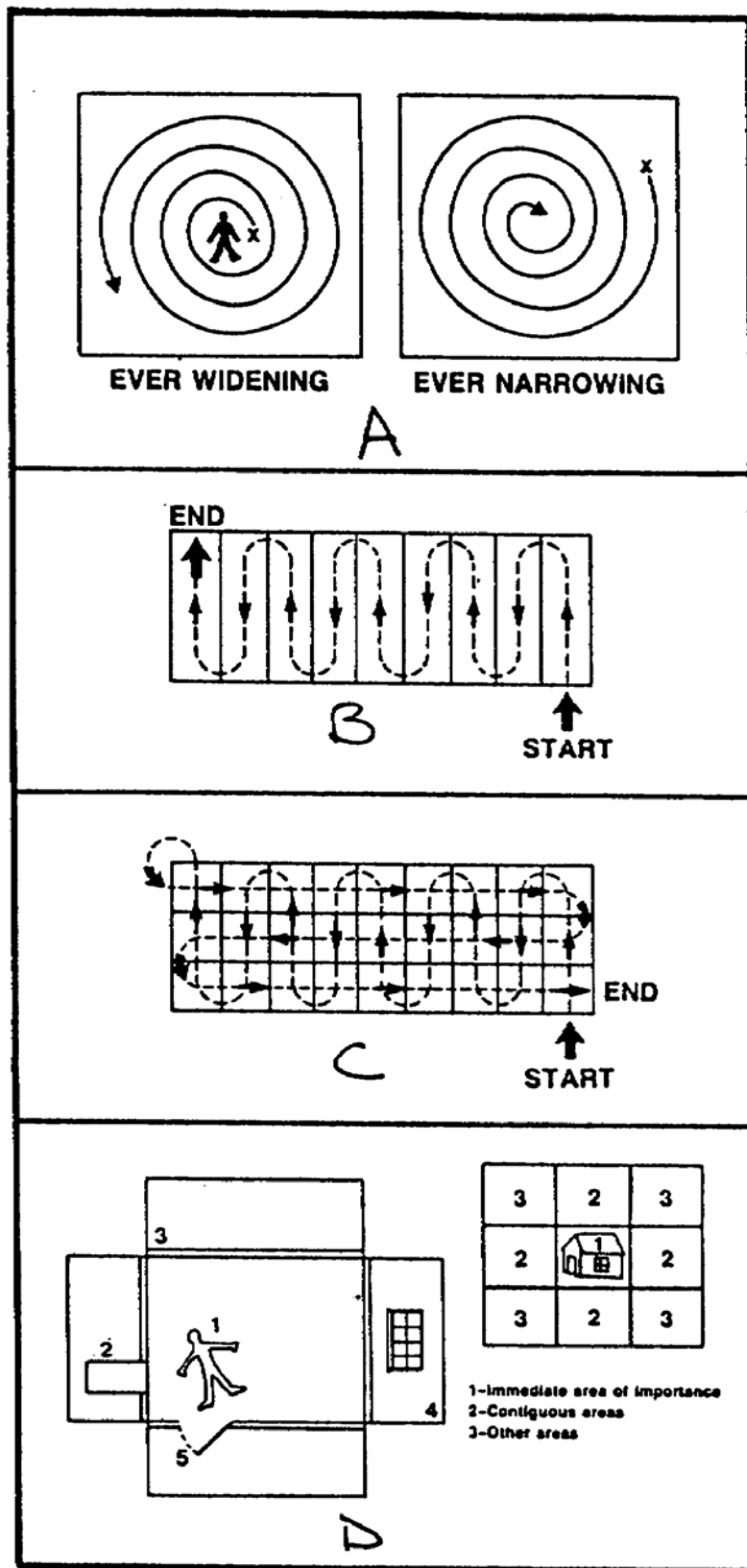
- A. A.
- B. B.
- C. C.
- D. D.

7. Using the four illustrations, which would you identify as the strip search method?

- A. A.
- B. B.
- C. C.
- D. D.

8. Still using the four illustrations, which would you identify as the grid search method?

- A. A.
- B. B.
- C. C.
- D. D.



## LESSON 2

### PRACTICE EXERCISE

#### ANSWER KEY AND FEEDBACK

<u>Item</u>	<u>Correct Answer and Feedback</u>
1. B.	Unbroken chain of signatures. Primary evidence... (page 2-39, para 4)
2. B.	Three months after investigation is completed. Three months... (page 2-51, para 2)
3. B.	Controlled substances such as marijuana, hashish, heroin, and cocaine. Controlled substances... (page 2-54, para 2)
4. C.	E6 or above. Controlled substances... (page 2-53, para 1)
5. C.	AR 195-5. It is the... (page 2-43, para 1)
6. D.	D. Figure 2-1. (page 2-5)
7. B.	B. Figure 2-1. (page 2-5)
8. C.	C. Figure 2-1. (page 2-5)

## LESSON 3

### TEMPORARY EVIDENCE STORAGE

Critical Task: 03-3758.00-8000

#### OVERVIEW

##### LESSON DESCRIPTION:

In this lesson you will learn to identify the procedures for establishing a temporary evidence storage facility.

##### TERMINAL LEARNING OBJECTIVE:

ACTION:	Establish a temporary evidence storage facility.
CONDITION:	You will have this subcourse, paper and pencil.
STANDARD:	To demonstrate competency of this task you must achieve a minimum score of 70 percent on the subcourse examination.
REFERENCES:	The material contained in this lesson was derived from the following publications: AR 190-22, AR 195-5, CID Reg 195-1, and FM 19-20.

#### INTRODUCTION

In Lessons 1 and 2 you learned of the complex considerations necessary for--

- o Search and seizure.
- o Evidence handling and monitoring.

Both of these functions relate to using evidence for criminal prosecution. In Lesson 3, you will learn the considerations for--

- o Establishing and using temporary storage containers.
- o Establishing temporary evidence storage security.

There will be times when you need to temporarily store and safeguard evidence. These times may occur--

- o When the main evidence depository is closed.
- o During weekend hours.



It is important that you know the considerations of temporary evidence storage. Following the required procedures will ensure that evidence is admissible into court. Therefore, in this lesson you will learn--

- o to determine the requirements for temporary evidence storage containers.
- o to determine the requirements and procedures for establishing temporary evidence storage security.

#### PART A - TEMPORARY EVIDENCE STORAGE CONTAINERS

Various types of containers may be used for the temporary storage of evidence. The type of container required will depend on several factors. When deciding which type of container to use, consider the following:

- o Type of evidence.
- o Size of evidence.
- o Amount of evidence.
- o Physical location of CID or MP.
- o Time evidence is obtained.

#### FIELD SAFES OR SECURED FILE CABINETS

Field safes or secured file cabinets can be used as temporary evidence storage containers. Access to the safe or file cabinet should be secured. Those personnel having access should be--

- o Duty agent.
- o MPI duty investigator.
- o MP desk sergeant.

A keyed padlock for these safes or file cabinets should be used. Do not use a combination padlock. See Figure 3-1.

Remember to secure the keys to these storage containers. Place keys in a separate envelope. Place the keys in the safe that contains combination numbers and other keys to padlocks to the evidence room. Make sure you label the envelope so the next person who retrieves a key understands which lock it will open.

Try to have one evidence container for each person. Each duty individual should have their own container. This limits the number of times that evidence will change custody. The number of containers used will depend on how much and what kind of evidence is handled. This would apply during weekends and hours the evidence custodian is off duty.

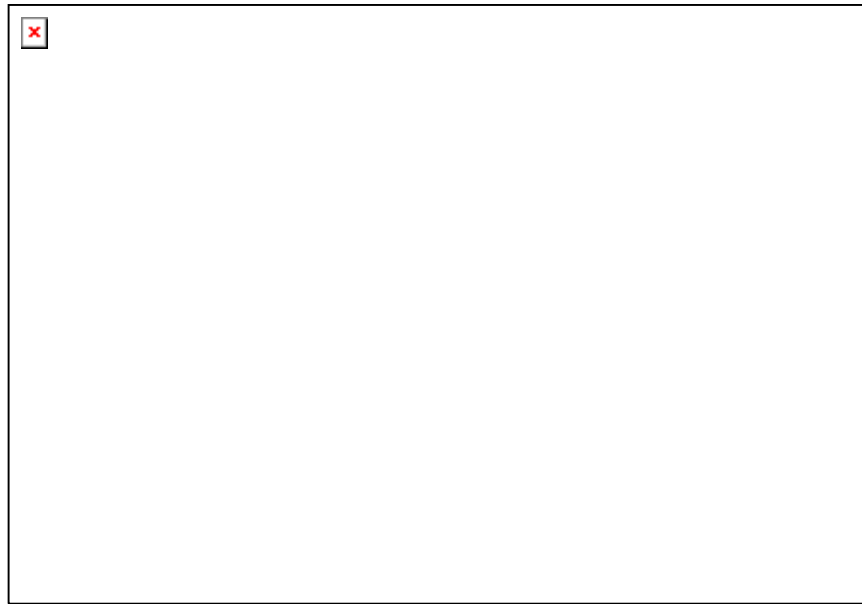


Figure 3-1. Types of Pad Locks.

There are requirements for securing temporary evidence storage containers. These requirements are listed below.

Containers that weigh less than 500 pounds must be secured to a structure. Using a chain, fasten the container to a--

- o Building.
- o Radiator.
- o Water pipe.
- o Eyelet installed for this purpose.

When several containers are used, they may be fastened together. The combined weight of containers secured to each other must be 500 pounds or greater. The chains used must be secured with--

- o Heavy duty pin tumbler padlocks.
- o Combination padlocks.

#### CONEX CONTAINERS

Salvaged container expresses (CONEX) may be used as a temporary evidence room. The CONEX must satisfy certain requirements:

- o The CONEX must be waterproofed.
- o All openings must be covered with angle iron or steel bars.

- o Steel mesh must be welded to the internal walls.
- o Steel straps must be put on the front side of the CONEX.

Steel straps have the following requirements:

- o Straps must be 2 inches wide and 1/4 inch thick.
- o Straps must be mounted to span the width of the door.
- o Straps must be hinged or hung from eye bolts. Eye bolts must be welded beyond the hinges of the door.
- o The upper strap must be mounted 18 inches from the top of the door.
- o The lower strap must be mounted 18 inches from the bottom of the door.
- o The free end of each strap must be slotted to fit staple of heavy pattern steel.
- o Straps should be secured with padlocks of the type previously described.

Whenever you use a CONEX, place it near a 24-hour operational activity. Make sure personnel working in that operation observe the CONEX.

## BUILDINGS OR ENCLOSURES

Buildings and enclosures may also be used to temporarily store evidence. These types of storage facilities would be used for--

- o Unusually large items (like motor vehicles).
- o Large amounts of evidence that would not fit in the evidence room.

A fenced enclosure should be used when there is no suitable building. When a fenced enclosure is used, you, or the evidence custodian, are responsible for providing protection for the evidence.

## PART B - TEMPORARY EVIDENCE STORAGE SECURITY

### ACCOUNTABILITY

As an MPI supervisor, you can be accountable for evidence. You must know the procedures for keeping track of evidence that is temporarily stored. Procedures follow those taught in Lesson 2. Those procedures are in accordance with AR 195-5, Chapter 2.

### SECURITY

Security of evidence is of great importance. Evidence that is not secure could become lost, damaged, or stolen. If this happens, the value of the

evidence for criminal prosecution is lost. Your duties as an MP investigator include supervision of security for evidence that is temporarily stored. You must supervise the control of keys and combination locks and control access to the evidence room.

### Controlling Keys and Combination Locks

The evidence room must be locked when not occupied. Keys or combination control locks may be used.

There are specific requirements for combination locks. Only a limited number of people will know the combination of locks used in the evidence room. Those people are the--

- o Primary evidence custodian.
- o Alternate evidence custodian.

The combinations, however, must be documented. The appropriate form for the recording of lock combinations is SF Form 700 (Security Container Information). These forms will be kept in the locked safe of the--

- o CID commander.
- o Special agent in charge (SAC).
- o Provost marshal.

If a lock is key operated, you must make sure it has only two keys. The primary custodian will keep one key at all times. The second key will be put in an envelope and stored in the safe in one of the offices listed above.

When the primary or alternate custodian is changed, all combination and key locks will be changed.

The primary custodian is responsible for all keys used in the evidence room. Keys will be transferred to the alternate custodian if the primary custodian is absent for--

- o More than 1 duty day.
- o 3 non-duty days.

### Controlling Access

You will permit only authorized personnel entrance into the evidence room. Personnel such as a primary or alternate "controlled substance training aids custodian" may enter. However, he or she must be escorted. His or her only business in the evidence room must be to issue and receive training aids. These custodians will not have access to evidence. They must not handle evidence at all. In keeping with the intent of this rule, evidence custodians

will not deal with controlled substance training aids. This is a method of ensuring the security of controlled substance training aids and evidence.

#### Exceptions to AR 195-5

Situations may occur that make exceptions to AR 195-5 necessary. If you need to make an exception, send a request to the following address:

Commander  
USACIDC  
ATTN: CIPP-PD  
6010 6th Street  
Fort Belvoir, VA 22060-5506

An installation commander may also grant requests for exceptions. A request will--

- o Describe the deficiencies encountered.
- o Explain why corrective action cannot be taken.
- o Explain what steps you have taken to compensate for the deficiency.
- o Show whether the exception is permanent or temporary.

If your request involves structural deficiencies or issue of a supply item, enclose one of the following:

- o A copy of DA Form 4823 (Job Order Request Facilities Engineering).
- o The document requesting the required items from supply channels.

Retain a copy of these records until the deficiency is corrected or the exception expires. Exceptions will normally not go beyond one year.

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## LESSON 3

### PRACTICE EXERCISE

#### INSTRUCTIONS

You have just finished reading the instructional material for Lesson 3. This lesson covered temporary evidence storage. It is now time to check your understanding of the lesson. This is done by completing the practice exercise below. All of the questions are multiple-choice and are intended to measure your understanding of temporary evidence storage. There is only one correct answer to each question. Try to answer all of the questions without referring to the lesson materials.

When you have completed all the questions, turn the page and check your answers against the correct responses. Each correct response is referenced to a specific portion of the lesson material. Review any questions you have missed or do not understand. When you have completed your review, continue to the next lesson.

**SITUATION:** You are holding refresher training with your unit on the requirements for securing the temporary evidence storage container. Specifically, you are discussing when they must be secured to a building, radiator, water pipe, or an eyelet installed for this purpose.

1. A temporary evidence storage container that weighs less than how many pounds must be chained to a building, radiator, water pipe, or eyelet installed for this purpose?
  - A. 200 pounds.
  - B. 300 pounds.
  - C. 400 pounds.
  - D. 500 pounds.
  
2. The primary custodian is responsible for all the keys used in the evidence room. As supervisor, you will allow the primary custodian to transfer the keys to the alternate custodian. This is permissible only when the primary custodian is going to be absent for which of the following?
  - A. 2 duty days, 0 nonduty days.
  - B. 0 duty days, 2 nonduty days.
  - C. 1 duty days, 3 nonduty days.
  - D. 2 duty days, 1 nonduty days.

3. When several containers are used, they may be fastened together without also being fastened to the structure. What must be the minimum combined weight of all the containers fastened together?

- A. 300 pounds.
- B. 500 pounds.
- C. 700 pounds.
- D. 900 pounds.



## LESSON 3

### PRACTICE EXERCISE

#### ANSWER KEY AND FEEDBACK

<u>Item</u>	<u>Correct Answer and Feedback</u>
1. D.	500 pounds. Container that... (page 3-3, para 2)
2. C.	1 duty day, 3 nonduty days. Keys will be... (page 3-5, para 7)
3. B.	500 pounds. The combined... (page 3-3, para 3)

## APPENDIX A

### DEFINITIONS

**ADMISSION:** A self-incriminating statement which falls short of a complete acknowledgement of guilt.

**APPREHENSION:** The taking into "custody" of a person. "Custody" means physical control. Control may be accomplished by use of force or by consent of the person being apprehended.

**AUTHORIZATION TO SEARCH:** Specific permission issued by a competent military authority. This permission may be either oral or written. This authorizes someone to search a specific person or area. They must look for specific property or evidence.

**CONFESSION:** A complete acknowledgement of guilt.

**CONTRABAND PROPERTY:** Material declared to be unlawful by an appropriate statute, regulation, or order. It is subject to seizure when in the possession of a person who does not have official business with that material.

**EVIDENCE:** Anything that tends to help determine the truth of a matter. Anything that furnishes proof of a fact. Evidence can be physical or testimonial.

**EXIGENT CIRCUMSTANCES:** Conditions of a situation that demand prompt action.

**FRAGILE EVIDENCE:** Anything that cannot be preserved without careful attention. Evidence that will deteriorate or become destroyed without special care. For example, a footprint in the snow is fragile evidence. A cast can be made that preserves it permanently. Fingerprints can be "lifted" or removed.

**FIXED OR IMMOVABLE EVIDENCE:** Anything that cannot be removed from a scene of a crime because of its size, shape, or makeup. For example, floors, walls, or telephone poles.

**FUNGIBLE EVIDENCE:** Evidence that might easily be exchanged or substituted for other substances. Evidence that is not--

- o Easily identified.
- o Marked clearly.
- o Possessed of individual characteristics. Examples of such evidence are marijuana, pills, powders, hairs, and fibers.

**HERESAY:** A statement presented as the truth based on what others have said.

**MOVABLE EVIDENCE:** Anything that can be picked up and moved from a crime scene. For example, tools, weapons, clothing, glass, and documents.

PHYSICAL EVIDENCE: Anything which has a logical tendency to prove or disprove a material fact or issue.

PROBABLE CAUSE:

To search. A reasonable belief that a crime has been committed and that the person, property, or evidence sought in connection with the crime is located in the place or on the person to be searched.

To apprehend. A reasonable belief that a crime has been committed and that the person to be apprehended has committed it.

REASONABLE SUSPICION: A belief based on facts that would lead a reasonable person to conclude in light of his or her experience that criminal activity may be going on.

SEARCH: An examination of a specific person, property, or area. This is authorized by law. Those people searching are looking for specific property or evidence. An examination of a specific person for the purpose of seizing a specific person, property, or evidence. The seized evidence is for the purpose of criminal prosecution.

SEARCH WARRANT: An expressed authorization to search and seize issued by a civilian authority.

SEIZURE: Taking possession of an item, property, or person by an authorized agent of the government.

STOP: A limited detention of a person for the purpose of making an inquiry into activities which have led the detaining official to believe that a criminal activity may be going on. The purpose of the stop must be to make an investigation.

TESTIMONIAL EVIDENCE: A statement made under oath which supports a fact or other statement.

## APPENDIX A

### DEFINITIONS

**ADMISSION:** A self-incriminating statement which falls short of a complete acknowledgement of guilt.

**APPREHENSION:** The taking into "custody" of a person. "Custody" means physical control. Control may be accomplished by use of force or by consent of the person being apprehended.

**AUTHORIZATION TO SEARCH:** Specific permission issued by a competent military authority. This permission may be either oral or written. This authorizes someone to search a specific person or area. They must look for specific property or evidence.

**CONFESSION:** A complete acknowledgement of guilt.

**CONTRABAND PROPERTY:** Material declared to be unlawful by an appropriate statute, regulation, or order. It is subject to seizure when in the possession of a person who does not have official business with that material.

**EVIDENCE:** Anything that tends to help determine the truth of a matter. Anything that furnishes proof of a fact. Evidence can be physical or testimonial.

**EXIGENT CIRCUMSTANCES:** Conditions of a situation that demand prompt action.

**FRAGILE EVIDENCE:** Anything that cannot be preserved without careful attention. Evidence that will deteriorate or become destroyed without special care. For example, a footprint in the snow is fragile evidence. A cast can be made that preserves it permanently. Fingerprints can be "lifted" or removed.

**FIXED OR IMMOVABLE EVIDENCE:** Anything that cannot be removed from a scene of a crime because of its size, shape, or makeup. For example, floors, walls, or telephone poles.

**FUNGIBLE EVIDENCE:** Evidence that might easily be exchanged or substituted for other substances. Evidence that is not--

- o Easily identified.
- o Marked clearly.
- o Possessed of individual characteristics. Examples of such evidence are marijuana, pills, powders, hairs, and fibers.

**HERESAY:** A statement presented as the truth based on what others have said.

**MOVABLE EVIDENCE:** Anything that can be picked up and moved from a crime scene. For example, tools, weapons, clothing, glass, and documents.

PHYSICAL EVIDENCE: Anything which has a logical tendency to prove or disprove a material fact or issue.

PROBABLE CAUSE:

To search. A reasonable belief that a crime has been committed and that the person, property, or evidence sought in connection with the crime is located in the place or on the person to be searched.

To apprehend. A reasonable belief that a crime has been committed and that the person to be apprehended has committed it.

REASONABLE SUSPICION: A belief based on facts that would lead a reasonable person to conclude in light of his or her experience that criminal activity may be going on.

SEARCH: An examination of a specific person, property, or area. This is authorized by law. Those people searching are looking for specific property or evidence. An examination of a specific person for the purpose of seizing a specific person, property, or evidence. The seized evidence is for the purpose of criminal prosecution.

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